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MATTHEW P. FITZPATRICK

PURGING THE EMPIRE

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OXFORD
UNIVERSITY PRESS

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UNIVERSITY PRESS
Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

Oxford University Press is a department of the University of Oxford.
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First Edition published in 2015

Impression: 1

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Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data
Data available

Library of Congress Control Number: 2014948235

ISBN 978–0–19–872578–7

Printed and bound by
CPI Group (UK) Ltd, Croydon, CR0 4YY

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For Peter, Elaine, Jane, Kate, and David
Thanks.

Acknowledgements

The writing of this work owes much to the generosity of numerous institutions and individuals, notably the Alexander von Humboldt Foundation which offered me a year-long research fellowship in Germany, the Australian Academy of the Humanities which bestowed upon me the Ernst Keller Travelling Scholarship, the Faculty of Behavioural and Social Sciences at Flinders University which provided me with a research grant, and the Discipline of History at Flinders University which showed great forbearance in allowing me an extended absence to take up the Humboldt Fellowship.

I would particularly like to thank Thomas Großbölting for his support, advice, and friendship during my stay at the Westfälische Wilhelms-Universität in Münster. Also in Münster, thanks to my part-time research assistant Lukas Grawe who tirelessly pedalled between Münster's various libraries, as well as to David Schrock and Florian Lindemann, who were constant sources of enthusiasm and insight in our shared bunker under the Scandinavian Studies library. Amongst others, Felicity Jensz, Mark Padgham, Holger Winkler, Megan Gaukroger, and the Grüneberg, Noël, Großbölting, Rosta, Pienemann, and McDonough families all made sure that our time in Germany was spent in good company. Thanks too to all those family and friends, too numerous to name, in Adelaide (BHPS), on the Central Coast, in Taree, Newcastle and (now) Perth who bore with me as I wrote this book.

When drafting this book, I was also the beneficiary of the expertise and advice of (in no particular order) Dick Geary, Andrew Bonnell, Peter Monteath, Andrew Zimmerman, Daniel J. Walther, Jennifer Illuzzi, Jennifer Jenkins, Bradley Naranch, Susie Protschky, and Krzysztof Lada who read and commented on various sections and chapters. Naturally, they should not be held to account for the errors and lacunae that remain. Thanks are also due to Birthe Kundrus at the Universität Hamburg, Daniel Siemens at the Universität Bielefeld, Norbert Frei at the Friedrich Schiller Universität Jena, Susie Protschky at Monash University, and Manfred Pienemann and Anke Lenzing at the Universität Paderborn, for providing me with sorely needed opportunities to test out my work in scholarly seminars. Small, preliminary sections of the research presented here have also been published in the *Journal of Modern History, History of the Family*, and *Itinerario*. Thanks to these journals for permission to reproduce some key findings here. Thanks also to Alina Stefańska of Torun Regional Museum (Muzeum Okręgowe w Toruniu) in Poland for her assistance with the cover image, *Rugi pruskie* by Wojciech Kossak (1909).

Chiefly I also wish to offer my deepest thanks, appreciation, and love to my wife, Natasha Grundy, for her extraordinary companionship and support while this book was being written. The same applies to my children, Ethan, Saskia, and Lily. Thank you for twice leaving your friends behind to live temporarily in Germany, and for giving me so many opportunities to leave the books alone and play for a while.

MPF

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Es wird auch eine Zeit kommen, wo die Geschichte über diese Ausweisungen sich erklären wird, und ich glaube, es wird dem Staatswesen dasjenige nicht zum Ruhme gereichen, was sie darüber wiedererzahlen wird.

Ludwik Jażdżewski, in the Reichstag, 15 January 1886

Introduction

In 1886, the German Centre Party's Burghard von Schorlemer-Alst caustically remarked in the Prussian House of Deputies,

> We are of course not lacking in exceptional laws, since we have built this new German Empire. We have exceptional laws that are aimed at entire classes, such as the May Laws and the Socialist Laws, we have exceptional laws for particular regions, like Alsace-Lorraine and for some time now in Posen, which will now be added to by new exceptional laws in Posen, West Prussia and also Upper Silesia.[1]

The 'exceptional laws' to which he referred included a series of mass expulsion provisions which aimed to rid Germany, or at least parts of Germany, of those deemed politically and demographically undesirable. Once identified as a threat, these groups of people were removed from their places of residence and moved from state to state, pushed over the borders of the empire, or in some instances transported between the different German colonies, irrespective of the gender, age, or culpability of the particular individuals involved. As one jurist described them in 1904, expulsions were a means of ensuring that those who were 'damaging and politically sick' were removed from society and relocated to a place where the damage they could cause would be minimized.[2] It is the reasons for these sporadically occurring mass expulsions, the different ways in which they occurred, and their place in the history of Imperial Germany that is the subject of this book.

As the following chapters make clear, those targeted for expulsion came from a range of national, political, and religious backgrounds. This diversity posed certain problems for German authorities, as according to Imperial German law,[3] not everyone residing in Germany was eligible for expulsion. Looking back at forty years of expulsion measures, a 1909 legal textbook advised that an expulsion order 'in the rule is only applied against foreigners'. The reasons that German nationals were not to be expelled, it continued, were simple. It was, 'on the one hand, forbidden constitutionally and, on the other, precluded by the impossibility of

[1] Burghard von Schorlemer-Alst, *Verhandlungen des Hauses der Abgeordneten*, 22 February 1886, p. 705.

[2] Walther von Conta, *Die Ausweisung aus dem Deutschen Reich und aus dem Staat und der Gemeinde in Preußen*, Franz Vahlen, Berlin, 1904, p. 1. Reproducing Conta's discussion almost *verbatim* a decade later was Hans Haeker's *Die Ausweisung nach der Gesetzgebung des Reichs und Preussens*, Julius Abel, Greifswald, 1913, p. 9.

[3] For a discussion of German expulsions in later periods, see Tobias Schwarz, *Bedrohung, Gastrecht, Intergrationspflicht. Differenzkonstruktionen im deutschen Ausweisungsdiskurs*, Transcript, Bielefeld, 2010.

its expedition, given that no state is bound to accept a foreign national'.[4] Several foundational laws in Imperial Germany supported this assessment. In particular, the provisions of Article One of the North German Confederation's 1867 Law for the Freedom of Movement (*Freizügigkeitsgesetz*), which was carried over into the German Empire after 1871, offered an inalienable right of residence for all German citizens.[5] The same law also specifically stated that any earlier 'special laws and privileges of particular regions and areas which provide for residency restrictions' were now null and void.[6]

Article Three of the German Constitution of 1871 reiterated these rights:

> For all of Germany there exists a common citizenship, with the effect that the dependent (subject, citizen) of any of the federated states is to be treated as a dependent of all. Accordingly they are to be afforded the right of abode, the right of trade and enterprise, to public office, to the acquisition of property, to the acquisition of citizen rights and the enjoyment of all other rights under the same conditions as dependents of those states. They are also to be treated equally with regard to the pursuit of legal claims and the protection of the law. No German may be restricted by the sovereign of his state of origin or the sovereign of another of the federated states in the exercise of these competencies.[7]

These laws, expressly guaranteeing all citizens right of abode, were also periodically reinforced by the *Reichstag*'s continuous refusal to enact legislation which would allow Germany to follow the path of Britain, France, and Russia in establishing penal colonies as an avenue for forcibly removing any unwanted segments of the population.

The corollary of these tight restrictions on internal population control was that the right to expel non-citizens was, at least in legal terms, unrestricted. The practical limitation placed upon this unrestricted sovereign right was that mass expulsions had a considerable impact upon relations between Germany and the states of origin of those expelled.[8] Resultingly, political and legal figures often cautioned

[4] J. Conrad, L. Elster, W. Lexis, and E. Loening, *Handwörterbuch der Staatswissenschaft* Bd 2, Gustav Fischer, Jena, 1909, pp. 314–18.

[5] On the question of who was or was not able to gain citizenship in Germany prior to World War One, see Dieter Gosewinkel, *Einbürgern und Ausschließen. Die Nationalisierung der Staatsangehörigkeit vom Deutschen Bund bis zur Bundesrepublik Deutschland*, Vandenhoeck & Ruprecht, Göttingen, 2001; Geoff Eley and Jan Palmowski, *Citizenship and National Identity in Twentieth-Century Germany*, Stanford University Press, Stanford, 2008.

[6] *Bundesgesetzblatt des Norddeutschen Bundes*, 1867, p. 55. On the importance of the *Freizügigkeitsgesetz* to restricting the capacity of German authorities to expel German citizens, see Conrad et al., *Handwörterbuch der Staatswissenschaft*, p. 315, Max Fleischmann, *Wörterbuch des Deutschen Staats- und Verwaltungsrecht Bd I*, JCB Mohr, Tübingen, 1911, p. 286. The only exception countenanced by the law was the capacity of some state authorities to shield a region from ex-convicts as well as from those with a recent conviction for begging or chronic vagrancy. See too Max Lehmann, *Die Ausweisung im System des deutschen Fremdenrechts*, Karl Fiebelkorn, Gartz, 1898, pp. 9–11.

[7] 'Gesetz, betreffend die Verfassung des Deutschen Reichs vom 16 April 1871', *Bundes-Gesetzblatt des Deutschen Bundes* No 16, 1871, p. 65.

[8] Conrad Bornhak, 'Die Ausweisung fremder Staatsangehörigen vom völkerrechtlichen und staatsrechtlichen Standpunkte', in Heinrich Dernburg (ed.), *Festgabe für Heinrich Dernburg zum fünfzigjährigen Doktorjubiläum am 4. April 1900*, Müller, Berlin, 1900, p. 119.

that such expulsions were to be applied carefully, infrequently, or not at all.[9] As the following makes clear, this advice was not always heeded and the several instances of mass expulsions between 1871 and 1914 never failed to heighten the alarm of prominent political and civic figures regarding the effects they would have on German foreign relations. Despite such concerns, Germany still expelled 32,000 Russian and Austrian Poles, more than 1,000 Danes from northern Schleswig, and 1,000 French citizens from Alsace-Lorraine in separate waves of mass expulsions. Also attracting criticism, if for other reasons, was Germany's consistent expulsion of so-called Gypsies into neighbouring countries.

Notwithstanding the prohibition on the expulsion of German citizens, there remained very clear instances of German citizens being targeted for a modified form of expulsion. During the *Kulturkampf*, both foreign and domestic Jesuits found themselves targeted by expulsion measures, the nature and intensity of which were carefully tailored to deal with their varying citizenship statuses. Similarly, under the provisions of the Socialist Law, German Social Democrats were regularly purged from particular regions of Germany, with more severe expulsion provisions that would have seen them stripped of their citizenship and exiled from Germany only averted by a mix of parliamentary and royal opposition. Under the special constitutional and legal provisions pertaining to Alsace-Lorraine and the German colonies, German citizens too were targeted for removal from these regions, while in German Southwest Africa, leadership groups and even entire subject nations were targeted for expulsion as part of an attempt to secure the colony against indigenous resistance. Alongside undesirable foreigners, undesirable Germans too found themselves subject to expellant measures.

While this book focuses on instances of mass expulsions, this does not mean that all of those removed from German territory were swept up in such wholesale purges. Deportation orders were continuously levelled against individual non-citizens on the basis of circumstances pertaining to that particular individual. Here the differences between expulsions, deportations, and extraditions become important. In the cases studied here, the term 'expulsion' is used, as a translation of the German term *Ausweisung*, which at the time covered both individual and collective expulsions, but was more regularly used in the cases of collective removals. Similarly, the term 'mass expulsions' used here corresponds to the frequently used '*Massenausweisungen*', a term more often found in the polemics of those against the measures than in the descriptions of the authorities who authorized them. Although there are liminal cases which problematize the strict separation of the two, for the sake of clarity the term 'deportation' (usually *Deportation* rather than the more recent *Abschiebung*) has been used here to refer to the removal of individuals rather than groups. As per *Kaiserreich* practice, neither the term *Ausweisung* nor *Deportation* refers to cases of extradition (*Auslieferung*) requested by foreign jurisdictions. Nor do they refer to the 'voluntary' population movements of 'optants' (*Optanten*) who chose to retain their Danish or French citizenship under the

[9] Walther von Conta, *Die Ausweisung aus dem Deutschen Reich*, pp. 5, 8.

terms of their respective treaties following the territorial changes occurring after the wars of 1864 and 1870/71.[10]

Admittedly the question of the point at which a series of individual deportations turned into a single process of expulsion is a vexed one. As Conrad Bornhak commented in 1900, the question resembles that of 'how many individuals are required to form a crowd'.[11] For the purposes of this study it is argued that the difference resides in the grounds for expulsion lying with a target's (often unwitting or inescapable) membership of a putatively dangerous group rather than a result of the actions of an individual. Illustrating this distinction is the case of the deportation of the Dutch confectionary merchant Bernard Gerhard Lampe in 1903. Lampe's case became a *cause célèbre* in the summer of that year primarily because his custom was so highly valued by Westphalian confectioners. In this instance, Prussian authorities had issued Lampe with a deportation order not because he was Dutch nor because he was a member of a large organization that represented a political threat, but because he had begun his life as a German citizen and had knowingly forfeited his citizenship when he took the decision to flee to the Netherlands to escape compulsory military service in his youth. Like others deported singly from Germany, Lampe had rendered himself liable to deportation by his earlier individual actions rather than because of any generic characteristics he inadvertently shared with a larger social segment.[12]

Crucially, both individuals like Lampe and those expelled as part of a group were not expelled as punishment for a crime. Technically, whether individual or *en masse*, expulsions and deportations never constituted a form of judicial punishment and could not be part of a judge's sentence, in the way that may have been possible had Germany followed the British route and allowed judges to sentence prisoners to transportation to a penal colony in lieu of a lengthy gaol sentence or execution. Unlike a court imposed sentence, expulsions were a 'security measure' decided upon by state authorities without necessarily being linked to a criminal prosecution.[13] Confusing the situation somewhat was the fact that, while deportations did not constitute part of a sentence, one of the grounds for the deportation of an individual non-citizen could be a conviction for a crime. Alongside begging and vagrancy, that is, criminality was seen as sufficient grounds to deem someone as 'burdensome' (*lästig*) and therefore liable to deportation. A 'burdensome'

[10] Max Fleischmann, *Wörterbuch des Deutschen Staats- und Verwaltungsrecht Bd I*, JCB Mohr, Tübingen, 1911, p. 280. See too Lehmann, *Die Ausweisung*, p.17.

[11] Bornhak, 'Die Ausweisung fremder Staatsangehörigen', p. 110.

[12] GStAPK Rep 77 Tit 1176 Beiakten 3. See too *Westfälische Volksblatt* 4 July 1903, Nr 278. The following does not discuss the cases of those Germans who saw their citizenship lapse as a result of their extended period of settlement abroad, as a result of §21 des Gesetzes v 1.6.1870. On this see Max Behrfeldt, *Der Verlust der Staatsangehörigkeit durch Naturalisation und durch Aufenthalt im Auslande nach geltendem deutschem und französischem Staatsrechte*, Verlag von M & H Marcus, 1903.

[13] Max Fleischmann, *Wörterbuch des Deutschen Staats- und Verwaltungsrecht*, p. 284, See too Max Fleischmann's statement that 'Die Ausweisung ist kein Strafmittel, sie ist Sicherungsmittel' in his article 'Nochmals die Ausweisung aus den Schutzgebieten', *Koloniale Rundschau* (2), 1910, p. 243.

individual might also be deported because they represented an ostensible threat to the security of the state, or a danger to public order, social harmony, or vital business interests. Beyond the remarkably elastic category of 'burdensome', provisions also existed for the use of expulsions to remove individuals and groups in 'exceptional circumstances' such as war and civil unrest; a provision which Germany shared with other European nations, as the mass expulsion of more than 40,000 Germans from France during the Franco-Prussian war illustrates.[14]

Understanding precisely how Imperial Germany's expulsions were decided upon and carried out requires a firm sense of both the socio-political points of provenance of the demands for expulsions and the loci of agency which saw the transformation of these demands into state practice. Assessments of the extent and location of political agency in the German Empire are legion,[15] but only rarely do they engage with a theoretical model which might be tested through the (more usual) empirical examination of concrete instances of how the various arms of the state and civil society combined to express, contest, and deny access to sovereign action. Perhaps thanks to Giorgio Agamben's reworking of it,[16] the political analysis of the early Carl Schmitt, which centres on the state of exception (*Ausnahmezustand*), has once again emerged as just such a theoretical model,[17] offering a set of heuristic tools capable of testing the location of sovereignty in Imperial Germany, particularly during periods of political crisis. Famously, for Schmitt, the confusion of overlapping competencies and of seemingly mixed constitutional competencies with multiple centres of power could simply be cut through by adhering to a simple maxim; sovereignty lies with those who decide the legal exception; that is, those with the power to declare a state of emergency and to enact exceptional laws.[18]

Schmitt was not the first to identify the centrality of the exception to attempts to characterize the nature of a socio-political system. Antedating Schmitt's linkage of radical expressions of sovereign power (such as expulsions) and the politico-legal matrix that enabled them was the declaration of Social Democrat Ignaz Auer that 'the Bismarckian system cannot function without exceptional laws'. This argument betrays a number of assumptions, all of which require careful scrutiny.[19] Auer's first assumption was that there was actually a 'Bismarckian system'; that is to say a coherent and consciously managed authoritarian political system with

[14] Max Fleischmann, *Wörterbuch des Deutschen Staats- und Verwaltungsrecht*, pp. 284–5. On the expulsion of 40,000 Germans from France in 1870, see Daniela L. Cagliotti, 'Waging War on Civilians: The Expulsion of Aliens in the Franco-Prussian War', *Past and Present* 221, 2013, pp. 161–95.

[15] For a useful overview see Thomas Kühne, 'Demokratisierung und Parlamentarisierung: Neue Forschung zur politischen Entwicklungsfähigkeit Deutschlands vor dem Ersten Weltkrieg', *Geschichte und Gesellschaft* 31(2), 2005, pp. 293–316.

[16] Giorgio Agamben, *State of Exception*, University of Chicago Press, Chicago, 2005.

[17] See for example Jennifer Illuzzi, 'Negotiating the "State of Exception": Gypsies' Encounter with the Judiciary in Germany and Italy, 1860–1914', *Social History* 35(4), pp. 418–38.

[18] Carl Schmitt, *Politische Theologie. Vier Kapitel zur Lehre von der Souveränität,* Duncker & Humblot, München, 1922, p. 9, 'Souverän ist, wer über den Ausnahmezustand entscheidet'.

[19] Ignaz Auer, *Nach zehn Jahren,* German Cooperative, London, 1889, pp. 54–5.

Bismarck at its centre from which decisions reflecting his will emanated. Keeping in mind James Retallack's advice to 'keep Bismarckian and Wilhelmine Germany in a single interpretative frame',[20] the implications of Auer's statement might be extrapolated to enable the broader question of precisely how authoritarian the *Kaiserreich* was more generally. Whether under Bismarck or any of his successors prior to World War One, was the German Empire an authoritarian state, an *Obrigkeitsstaat*?[21] And are the periodic mass expulsions undertaken there evidence of this? Or did the political freedoms and agency available to German citizens in the empire's 'political mass market' disarm elite attempts to consistently employ the apparatus of state in a manner conducive to the sustenance of a functioning authoritarianism.[22]

Certainly Auer's polemical assertion of a 'Bismarckian system' is the kind of political flourish that, if taken at face value, might lend support to Hans Ulrich Wehler's original but now antiquated *Sonderweg* formulation, which positioned an autocratic Bismarck 'at the apex of the pyramid of power'.[23] Perhaps more importantly in terms of recent historiographical developments, however, Auer's assertion of a 'Bismarckian system' leads to the question of whether Imperial Germany functioned as a *Rechtsstaat*, even a form of constitutional democracy, which was responsive to the political demands of its citizens.

This question has been puzzled over by numerous historians, most regularly with reference to the related but not necessarily identical question of how 'parliamentary' the *Kaiserreich* was. To borrow the designations used by Marcus Kreuzer, numerous studies by 'optimists' such as Margaret Lavinia Anderson,[24] Margaret

[20] James Retallack, 'Introduction' in James Retallack (ed.) *Imperial Germany, 1871–1918*, Oxford University Press, Oxford, 2008, p. 4.

[21] James Retallack, 'The Authoritarian State and the Political Mass Market', in S. O. Müller and C. Torp, *Imperial Germany Revisited: Continuing Debates and Perspectives*, Berghahn, New York, 2011, pp. 85–8.

[22] Originally coined by Hans Rosenberg, the phrase 'political mass market' is borrowed from Thomas Kühne's *Dreiklassenwahlrecht und Wahlkultur in Preussen, 1867–1914. Landtagswahlen zwischen korporativer Tradition und politischem Massenmarkt*, Droste, Düsseldorf, 1994.

[23] Hans-Ulrich Wehler, 'Bismarck's Imperialism, 1862–1890', *Past & Present* 48, 1970, 147; Hans-Ulrich Wehler, *Bismarck und der Imperialismus*, Kiepenheuer & Witsch, Cologne, 1969; Hans-Ulrich Wehler, *Krisenherde des Kaiserreichs 1871–1918: Studien zur deutschen Sozial- und Verfassungsgeschichte* (2nd edn), Vandenhoeck & Ruprecht, Göttingen, 1979. Challenging Wehler's analysis was David Blackbourn and Geoff Eley, *The Peculiarities of German History: Bourgeois Society and Politics in Nineteenth-Century Germany*, Oxford University Press, Oxford, 1984. In volume three of his *Deutsche Gesellschaftsgeschichte*, Wehler no longer refers to Bismarck as a 'Bonapartist' dictator, but rather as a Weberian 'charismatic' leader. Nonetheless the *Sonderweg* sense of intensely centralized power remained the same. Hans-Ulrich Wehler, *Deutsche Gesellschaftsgeschichte III: Von der "Deutschen Doppelrevolution" bis zum Beginn des Ersten Weltkrieges 1849–1914* Munich, 1995, p. 986. Jürgen Kocka too has maintained his belief that the German *Sonderweg* resided in the 'powerful authoritarian state'. Jürgen Kocka, 'Asymmetrical Historical Comparison: The Case of the German Sonderweg', *History and Theory* 38(1), 1999, pp. 40–50.

[24] Margaret Lavinia Anderson, *Practicing Democracy: Elections and Political Culture in Germany*, Princeton University Press, Princeton, 2000; Margaret Lavinia Anderson, 'Voter, Junker, Landrat, Priest: The Old Authorities and the New Franchise in Imperial Germany', *American Historical Review* 98(5), 1993, 1448–74; Margaret Lavinia Anderson, 'Reply to Volker Berghahn', *Central European History*, 35(1), 2002, pp. 83–90; Margaret Lavinia Anderson, 'Demokratie auf schwierigem Pflaster. Wie das deutsche Kaiserreich demokratisch wurde', in A Briskina-Müller, A Drost-Abgarjan, and

B Crosby,[25] and Kreuzer himself,[26] 'pessimists' such as James Retallack,[27] Helmut Walser Smith,[28] and Thomas Kühne,[29] and 'sceptics' such as Mark Hewitson,[30] have sought to discern the extent to which constitutionality, the rule of law, the separation of powers, and parliamentary norms were operative between 1871 and 1914. According to the optimists, the effective political agency of voters and the role of the state's parliamentary and legal organs in supporting democratic activity meant that 'the German *Kaiserreich*, with all of its partially undemocratic social and political relations, was a democracy'.[31] 'Pessimists' on the other hand have tended to emphasize the 'authoritarian structures, practices, and habits of mind in all areas of politics'.[32] Alternatively, others have posited that the nature of pre-war German decision making is best explained by 'personal rule' or the 'monarch mechanism'. At best, these pessimists argue, sovereign power lay with highly elite leadership circles.[33] Searching for a middle path and cautious about ascribing power to the empire's assemblies or civil society, Hewitson suggests that there were important foundational differences between German constitutionalism and Anglo-French parliamentarism. Nonetheless, he concedes, this did not mean that Wilhelmine Germany was simply in thrall to a form of 'pseudo-constitutional absolutism'.[34]

A Meißner (eds) *Logos im Dialogos. Auf der Suche nach der Orthodoxie. Gedenkschrift für Hermann Goltz*, Lit Verlag, Berlin, 2011.

[25] Margaret Barber Crosby, *The Making of a German Constitution: A Slow Revolution*, Berg, Oxford, 2008, pp. 75–81.

[26] Marcus Kreuzer, 'Parliamentarization and the Question of German Exceptionalism, 1867–1918', *Central European History* 36(3), 2003. Contra Kreuzer, see Jonathon Sperber, 'Comments on Marcus Kreuzer's Article', *Central European History* 36(3), 2003; Kenneth F. Ledford, 'Comparing Comparisons: Disciplines and the Sonderweg', *Central European History* 36(3), 2003, pp. 367–74.

[27] James Retallack, *The German Right, 1860–1920: Political Limits of the Authoritarian Imagination*, University of Toronto Press, Toronto, 2006.

[28] Helmut Walser Smith, 'When the Sonderweg Left Us', in S. O. Müller and C. Torp, *Imperial Germany Revisited. Continuing Debates and Perspectives*, New York, 2011, pp. 21–36.

[29] Thomas Kühne, 'Demokratisierung und Parlamentarisierung'; Thomas Kühne, 'Parlamenta rismusgeschichte in Deutschland: Probleme, Erträge und Perspektiven einer Gesamtdarstellung', *Geschichte und Gesellschaft* 24(2), 1998, pp. 323–38; Thomas Kühne, 'Political Culture and Democratization', in James Retallack (ed.), *Imperial Germany, 1871–1918*, Oxford University Press, Oxford, 2008, pp. 174–95.

[30] Mark Hewitson, 'The Kaiserreich in Question: Constitutional Crisis in Germany before the First World War', *Journal of Modern History* 73(4), 2001, pp. 725–80; Mark Hewitson, 'The Wilhelmine Regime and the problem of Reform: German Debates about Modern Nation-States', in G. Eley and J. Retallack (eds), *Wilhelminism and its Legacies. German Modernities, Imperialism and the Meanings of Reform*, Berghahn Books, New York, 2004, pp. 73–90.

[31] Anderson, 'Demokratie auf schwierigem Pflaster', p. 247.

[32] Retallack, *The German Right, 1860–1920*, p. 10.

[33] John C. G. Röhl, *The Kaiser's Personal Monarchy, 1888–1900*, Cambridge University Press, Cambridge, 2004; John C. G. Röhl, *Kaiser, Hof und Staat. Wilhelm II und die deutsche Politik*, CH Beck, Nördlingen, 2007, pp. 116–140; John C. G. Röhl, 'Introduction', in J. C. G. Röhl and N. Sombart, *Kaiser Wilhelm II. New Interpretations*, Cambridge University Press, Cambridge, 1982, pp. 1–22. On the inner circle of the Kaiser, see Isabel V. Hull, *The Entourage of Kaiser Wilhelm II, 1888–1918*, Cambridge University Press, Cambridge, 1982. For work reiterating Röhl's position, see Annika Mombauer and Wilhelm Deist (eds), *The Kaiser: New Research on Wilhelm's Role in Imperial Germany*, Cambridge University Press, Cambridge, 2003. Contra the pessimists, see Crosby, *The Making of a German Constitution*, pp. 194–201.

[34] Hewitson, 'The Kaiserreich in Question', pp. 726–27.

To the extent that the present work addresses this debate, the evidence amassed here supports the optimists' scepticism towards the characterization of the German Empire as an *Obrigkeitsstaat* which heavily restricted the political agency of its citizenry. Yet, in assessing the strength of a putative 'Bismarckian system', this work also focuses on issues beyond those of parliamentarization, electoral processes, and electoral results. While scrutiny of the *Reichstag* and the other deliberative bodies of the German states remains central to establishing precisely what role state structures played in enacting and responding to exceptional laws and measures, the following also searches for political agency in non-state receptacles of power, even during ostensible states of exception, in the multifarious, extra-electoral interactions between citizens and the institutions of the state. These elements of 'history from below' are hardly novel; indeed Richard J. Evans cautioned against a fixation on the state and the manipulative power of Germany's political elites more than 35 years ago,[35] while Geoff Eley famously demonstrated in his 1980 monograph the extent to which economic and political pressure groups were more than capable of intervening in ways that altered the direction of state policy.[36] More recently, Brett Fairbairn has renewed the search for political, indeed democratic agency in Germany's associational life.[37] Taking seriously the degree of agency available to those participating in politics outside of the state's deliberative assemblies, the following shows how citizens not only voted but also used public meetings, letter writing, marches, the press, petitions, and riots to affect the degree and direction of the state's application of coercive power. While these avenues of civic power were not always evident or successful to the same degree, this work contends that the various manifestations of political agency emanating from associational life and civil society were critical in the genesis of *Kaiserreich* expulsions.

Talk of civic–state relations is of course fraught, given that the dichotomy between 'state' and 'civil society' belies the fact that state action and civic life were deeply entangled.[38] As Foucault argued in *The Birth of Biopolitics*, reverting to a state/civil society dualism to describe rival (rather than conjoined) sites of power obscures the obvious interplay and overlap between 'state' and 'civic' actors in modern processes of governmentality.[39] In an attempt to move beyond this artificial division, the following shows how in Imperial Germany power emanated from innumerable points without adhering to a strict 'binary and all-encompassing opposition between rulers and ruled at the root of power relations'.[40] With an eye

[35] Richard J. Evans, 'Introduction', in Richard J. Evans, *Society and Politics in Wilhelmine Germany*, Croom Helm, London, 1978, p. 23.

[36] Geoff Eley, *Reshaping the German Right: Radical Nationalism and Political Change after Bismarck*, Yale University Press, New Haven, 1980.

[37] Brett Fairbairn, 'Membership, Organization, and Wilhelmine Modernism. Constructing Economic Democracy through Cooperation', in G. Eley and J. Retallack, *Wilhelminism and its Legacies. German Modernities, Imperialism, and the Meanings of Reform, 1890–1930*, Berghahn, Oxford, 2004, pp. 35–6.

[38] See Michael Hardt, 'The Withering of Civil Society', *Social Text* 45, 1995, p. 28.

[39] Michel Foucault, *The Birth of Biopolitics*, Palgrave, New York, 2008, pp. 76–8, 297–311.

[40] Michel Foucault, *The History of Sexuality, Volume I*, Penguin, London, 2008, p. 94.

to the permeability of the civic/state frontier, this study scrutinizes the participatory power of both state and non-state actors during periods occasioning mass expulsions. While allowing for the functional differences between the organs of the state and civil society (manifest in the state's formal, constitutionally-derived claim to monopoly control over a coercive apparatus), this book investigates precisely how effective such formal claims to sovereign power were when they were not affirmed by a critical mass of assenting or agitating citizens.

To return to Auer's suggestion of a 'Bismarckian system', the second of his assumptions is that this system relied upon exceptional laws (*Ausnahmegesetze*) to ensure that when the conventional rule of law contradicted the power imperatives of Bismarck's 'system', the ordinary rule of law was overturned or suspended through the use of extraordinary laws which stabilized the system in Bismarck's favour. Auer's related, third assumption was that this reliance upon exceptional laws was an indispensable condition, without which the 'Bismarckian system' would have disintegrated.

Testing these two assumptions requires a brief genealogy of the terms 'state of exception' (*Ausnahmezustand*) and 'exceptional law' (*Ausnahmegesetz*). In the European context, the terms have deep roots in Roman law, in particular in the Republican Roman tradition of electing a dictator with extraordinary powers to protect the state during periods of crisis, and thereafter the extraordinary senatorial decree, the S*enatus Consultum Ultimum*, which allowed for irregular consular power for the same purposes. The terms also reflected the legal tradition derived from the medieval powers reserved for the pope under the *Dictatus Papae* and the early modern doctrine of *plenitudo potestas*. Eventually the terms migrated to German from the French understanding of *loi d'exception*. Prior to and during the *Kaiserreich*, the terms were underwritten by the concept of *ius eminens*, which provided for the foundational right of the state to protect its existence. Constitutionally, the concepts found their expression in the provisions for declaring a state of war or siege (*Kriegszustand*/*Belagerungszustand*), both during international conflicts and times of domestic unrest.[41] More precisely, the *Kaiserreich* provisions for the suspension of civil liberties in times of crisis were expressed through Article 68 of the constitution, which specified that 'if the public safety is threatened within the federation' the Kaiser could declare a *Kriegszustand* (state of war), thereby unlocking the exceptional powers offered by the Prussian 'Law for the State of Siege' (*Gesetz über den Belagerungszustand*) of 4 June 1851.[42] This 1851 law, to which Article 68 referred, also made explicit that it pertained to circumstances beyond an empire-wide state of war generated by hostilities with another country. According to §5, it was specifically designed as an emergency measure enabling the suspension of the constitutional order either in general or in

[41] Hans Boldt, 'Ausnahmezustand, necessitas publica, Belagerungszustand, Kriegszustand, Staatsnotstand, Staatsnotrecht', in Otto Brunner, Werner Conze, and Reinhart Koselleck, *Geschichtliche Grundbegriffe* Band I, J. G. Cotta'sche Buchhandlung, Stuttgart, 1972, pp. 358–71.

[42] 'Gesetz, betreffend die Verfassung des Deutschen Reichs. Vom 16. April 1871', *Bundes-Gesetzblatt des Deutschen Bundes* 16, 1871, p. 82.

a particular region.[43] As §2 of the 1851 law made clear, the movement to a state of siege was possible during periods of civil commotion (*Aufruhr*). With the events of 1848 still a reference point for Prussian legislators, the 1851 law ensured that the state of siege was available 'in times of war as well as peace'.[44]

With the exact contours of the constitutional provisions for the state of exception in Imperial Germany in mind, Auer's contention that exceptional laws were indispensable to the maintenance of the 'Bismarckian system' might be addressed. Again, Carl Schmitt's theoretical edifice assists by questioning the underlying relationship between sovereignty and exceptionality, asking who exercises authority (*auctoritas)* when the socio-political harmony that underwrites the 'normalcy' of constitutionally framed positive law (*potestas*) is threatened.[45] Provocatively, Schmitt proposed that the fictive nature of normative constitutional power (*potestas*) was most visible in the state of emergency because 'in the exception, the power of real life breaks through the crust of a mechanism ossified through repetition'.[46] It was during exceptional moments of constitutional stress, he argued, that the supposed distance between meta-constitutional *auctoritas* and normative *potestas* shrank to nothing.[47]

Curiously, despite his deep interest in the utility of the state of exception for diagnosing the locus of sovereignty during the Weimar and Nazi eras, there are few clues to Schmitt's understanding of the state of exception as it applied to the *Kaiserreich*. One possible opportunity for such a discussion was missed in his (programmatically Nazi) 1934 portrait of the indeterminate conflict between liberal constitutionalism and martial authoritarianism prior to World War One, which shied away from his interest in the exception and reduced this posited

[43] Paul Stoepel, *Preußischer Gesetz-Codex. Band III, 1849–1856*, Trowitzsch & Sohn, Frankfurt, 1862, p. 282. 'Gesetz über den Belagerungszustand. Vom 4. Juni 1851 …§5. Wird bei Erklärung des Belagerungszustandes für erforderlich erachtet, die Artikel 5, 6, 7; 27, 28, 29, 30, und 36 der Verfassungs-Urkunde, oder einzelne derselben, zeit- und distriktweise außer Kraft zu setzen, so müssen die Bestimmungen darüber ausdrücklich in die Bekanntmachung über die Erklärung des Belagerungszustandes aufgenommen oder in einer besonderen, unter der namlichen Form (§3) bekannt zu machenden Verordnung verkündet werden. Die Suspension der erwähnten Artikel oder eines derselben ist nur für den Bezirk zulässig, der in Belagerungszustand erklärt ist und nur für die Dauer des Belagerungszustandes.'

[44] Stoepel, *Preußischer Gesetz-Codex. Bd III*, p. 282. 'Gesetz über den Belagerungszustand. Vom 4. Juni 1851 …§2. Auch für den Fall eines Aufruhrs kann, bei dringender Gefahr für die öffentliche Sicherheit, der Belagerungszustand sowohl in Kriegs- als in Friedenszeiten erklärt werden. Die Erklärung des Belagerungszustandes geht alsdann vom Staats-Ministerium aus, kann aber provisorisch und vorbehaltlich der sofortigen Bestätigung oder Beseitigung durch dasselbe, in dringenden Fällen, rücksichtlich einzelner Orte und Distrikte, durch den obersten Militärbefehlshaber in denselben, auf den Antrag des Verwaltungschefs des Regierungsbezirks, wenn aber Gefahr im Verzuge ist, auch ohne diesen Antrag erfolgen.'

[45] András Jakab, 'German Constitutional Law and Doctrine on State of Emergency—Paradigms and Dilemmas of a Traditional (Continental) Discourse', *German Law Journal*, 7(5), 2006, pp. 467–70; Joseph W. Bebdersky, *Carl Schmitt: Theorist for the Reich*, Princeton University Press, Princeton, 1983, p. 37. On Schmitt's use of *auctoritas* and *potestas*, see Agamben, *State of Exception*, pp. 74–88.

[46] Carl Schmitt, *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität*, Munich, 1922, p. 15.

[47] Alun Horward Gibbs, *Constitutional Life and Europe's Area of Freedom, Security and Justice*, Ashgate, Farnham, 2011, pp. 27–30.

dialectical struggle to the pre-history of its sublimation by the NSDAP.[48] It was only in a 1964 letter to Ernst Forsthoff that Schmitt offhandedly alluded to the Jesuit and Socialist laws of 1872 and 1878 respectively. Here he explicitly rejected Ernst Rudolf Huber's contention that they were 'shadowy' exceptional '*Maßnahmegesetze*',[49] arguing that 'the Jesuit Law of 1872 and the Socialist Law of 1878 were *political actions* (*politische Aktionen*) against real or imagined domestic enemies' and as such different to that which he considered a real *Ausnahmegesetz*, Germany's first Enabling Act (*Ermächtigungsgesetz*), passed on 4 August 1914, which allowed for government control of the economy during the war.[50]

Surprisingly, elements of Schmitt and Huber's antithetical readings of the Socialist and Jesuit laws can be reconciled. As the following chapters suggest, while Schmitt was correct in differentiating between the nature of these early *Kaiserreich* era laws and the 1914 Enabling Act, the former were still *Ausnahmegesetze*, as the concept was understood at the time. Although it is true that the strong centralist figure of the para-constitutional sovereign that lay at the heart of Schmitt's decisionist theory of sovereignty was never evinced by the 'exceptional laws' of 1871–1914, such a transcendental, Hobbesian sovereign was not a *conditio sine qua non* of *Kaiserreich* understandings of exceptional laws.

For his part, Huber was right to insist that the Jesuit and Socialist laws were exceptional laws (albeit in a restricted sense), but wrong to see them as existing in the same class as the Enabling Act of 1914. Given the eventual concentration of power under Hindenburg and Ludendorff during World War One, Huber was perhaps correct to read the 1914 *Ermächtigungsgesetz* forward, as 'the beginning of a long chain of similar powers' used during the Weimar and Nazi eras, although this is by no means self-evident.[51] Incorrectly, however, he included the Jesuit and Socialist laws, which neither envisaged nor resulted in the concentration of political powers in a few hands, as part of the same legal legacy. To cite Huber *contra* Huber, unlike Weimar Germany's President under Article 48 of the interwar constitution, 'there was no emergency decree law (*Notverordnungsrecht*) for the Kaiser', beyond his competency to declare a state of exception, which delegated power to the *Bundesrat*, the chancellor and the State Secretaries. As such, any suggestion of constitutional authoritarianism in Germany prior to 1914 must

[48] Carl Schmitt, *Staatsgefüge und Zusammenbruch des zweiten Reiches: der Sieg des Bürgers über den Soldaten. Anhang: Die Logik der geistigen Unterwerfung*. Duncker & Humblot, Berlin, 2011. In 1964, Schmitt would comment on this work, 'My work Staatsgefüge und Zusammenbruch simply deals with the organisational experiences of the construction of a situation in which the empire was *not yet* and the individual states *no longer* were a state' (emphasis in original). Ernst Fortsthoff and Carl Schmitt, *Briefwechsel 1926–1974*, Akademie Verlag, Berlin, 2007, p. 199. See too Ewald Grothe, 'Carl Schmitt und die "neuen Aufgaben der Verfassungsgeschichte" im Nationalsozialismus', *Forum historiae iuris*, 2006, <http://www.forhistiur.de/zitat/0603grothe.htm>.

[49] Ernst Rudolf Huber, *Deutsche Verfassungsgeschichte seit 1789, Band III: Bismarck und das Reich*, Kohlhammer Verlag, Stuttgart, 1963, pp. 919–20. Huber had described the two laws as 'marked examples of *Maßnahmegesetze* from the time of the German constitutional monarchy'.

[50] Schmitt to Forsthoff, 10 January 1964 in Fortsthoff and Schmitt, *Briefwechsel*, p. 199. Emphasis in the original. The context is his review of the third volume of Huber's *Verfassungsgeschichte*.

[51] Huber, *Deutsche Verfassungsgeschichte III*, p. 929.

be tempered by the fact that neither the Kaiser nor the chancellor could access a form of blanket legal power, even under the provisions for the state of siege (*Belagerungszustand*).[52]

As the above examples of the Jesuit and Socialist laws demonstrate, a history of the mass expulsions of the *Kaiserreich* greatly assists in historicizing the changing meaning of the 'state of exception'. By offering an opportunity for assessing the compatibility of exceptional laws with the *Rechtsstaat*, expulsions and the provisions that enabled them provide a series of test cases for Schmitt's foundational claim of the importance of the exception for settling the question of the ultimate locus of sovereignty. What this book shows is that the radicalization of the constitutional meaning of exceptionality by Schmitt, and his vision of a metajuridical sovereign empowered to adjudicate when the legal order was in crisis, were products of the later, interwar period and cannot be antedated to the *Kaiserreich*. It was with the Weimar constitution in mind that Schmitt saw the constitutional availability of recourse to the *Ausnahmezustand* as proof positive of the veracity of the twin Hobbesian maxims *auctoritas non veritas facit legem* and *princeps legibus solutus est*,[53] and attempts to dehistoricize Schmitt's *Politische Theologie* risk mistaking a contextually bound set of legal observations for timeless axioms of political economy.[54] Although it is Schmitt's narrowly decisionist and dehistoricized usage of the term '*Ausnahmezustand*' that has survived to dominate current understandings of the legal state of exception,[55] this book demonstrates that *Kaiserreich* understandings of what constituted a state of exception and debates over whether expulsion measures constituted *Ausnahmegesetze* and whether exceptional laws were desirable did not share Schmitt's supposition that 'exceptional' meant 'metajuridical' or 'extra-constitutional'. Rather, a weaker sense of the term *Ausnahmezustand* was operative; one which discerned exceptionality where laws

[52] Huber, *Deutsche Verfassungsgeschichte III*, pp. 927–8. On constitutional authoritarianism, see Retallack, *The German Right, 1860–1920*, pp. 115–16, 121.

[53] 'Authority not truth is the basis of law' and 'the sovereign is above the law'. This early period of Schmitt's work differs markedly from his later *Verfassungslehre* understanding of the possibility of 'democratic' sovereignty. Yet, at no point did Schmitt concede that Kelsen's depersonalized 'rule of law' could operate without reference to a particular centre of sovereign power. See Renato Cristi, *Carl Schmitt and Authoritarian Liberalism. Strong State, Free Economy*, University of Wales Press, Cardiff, 1998, pp. 108–45, William E. Scheuermann, *Carl Schmitt: The End of Law*, Rowman & Littlefield, Oxford, 1999, pp. 33–5.

[54] For a critique of Agamben's universalization of contextually bound Schmittian axioms see, Anne Norton, 'Pentecost: Democratic Sovereignty in Carl Schmitt', *Constellations*, 18(3), 2011, pp. 390–1.

[55] Carl Schmitt, *Politische Theologie*, 9. See too his 1916 study, 'Diktatur und Belagerungszustand: Eine staatsrechtliche Studie', reprinted in Carl Schmitt, *Staat, Großraum, Nomos. Arbeiten aus den Jahren 1916–1969* (ed. G Maschke), Duncker & Humblot, Berlin, 1995, pp. 3–23. Radicalizing Schmitt even further, Giorgio Agamben posits that, 'the state of exception is…a state devoid of law', a 'zone of anomie in which all legal determinations…are deactivated', Giorgio Agamben, *State of Exception*, pp. 1–3, 50, 74–86. See too Giorgio Agamben and Ulrich Raulff, 'An Interview with Giorgio Agamben', *German Law Journal* 5(5), 2004, p. 609; Giorgio Agamben, *Homo Sacer. Sovereign Power and Bare Life* (trans. D. Heller-Roazen), Stanford University Press, Stanford, 1998, pp. 166–80. For a critique of recent approaches drawing on Agamben and Schmitt, see William E. Scheuermann, 'Survey Article: Emergency Powers and the Rule of Law After 9/11', *Journal of Political Philosophy* 14(1), 2006, pp. 61–84.

were applied to one social segment but not another, but which took for granted not merely the continuation of the rule of law, but the totalizing apparatus of the constitutional *Rechtsstaat* later affirmed by Hans Kelsen.[56] It was, that is, with Schmitt that the *Ausnahmezustand* came to be viewed in German legal theory in Hobbesian terms as 'an exception for which the constitution had not foreseen a provision'. Prior to this, the term had been used in a 'non-technical sense', and only found a clear place as the basis for anti-positivist legal thought in the Weimar era.[57] As the following shows, prior to World War One the capacity to adjudicate on the applicability of exceptional measures and the ability of the state to resort to the declaration of a *Belagerungszustand* or *Kriegszustand* were seen as evidence of the strength rather than the weakness of the liberal state, anchored in positivist law, constitutionalism, and the precepts of the *Rechtsstaat*.

Predicated on the notion that the concepts '*Ausnahmezustand*' and '*Ausnahm egesetz*' had a long and rich tradition that predated Schmitt's anti-positivist usage of them, this book makes clear how the terms were commonly used (descriptively rather than analytically) after 1871 in political debate by both opponents of expulsion measures seeking to condemn them and advocates of the measures seeking to justify them. For advocates and critics alike these 'states of exception' referred to situations in which particular forms of associational life were criminalized. Recently, this situation of bespoke regulation has been viewed by some through the lens of Agamben, positioning members of afflicted groups as veritable *homines sacri*.[58] Yet given Agamben's argument that the *homo sacer* emerges at the point at which *bios* (political existence) is denied so that the extinguishment of *zoē* (bare life) has no legal implications,[59] the manipulation of the political conditions of minorities so as to force their assimilation (as opposed to their destruction) seems an inadmissible historical application of his analysis of more manifestly thanatopolitical interventions such as the Holocaust. Agamben's notion of the *homo sacer* might best be preserved for historical situations involving what I have referred to elsewhere as an abject response, in which a segment of the body politic is more radically and violently amputated.[60] Unlike the Holocaust and the *Porrajmos*, in the cases studies examined here (with the crucial but complex exception of the Herero genocide), the deliberate manipulation of the legal context

[56] For a concise introduction to this see Hidemi Suganami, 'Understanding Sovereignty through Kelsen/Schmitt', *Journal of International Studies* 33, 2007, pp. 511–30. See too Petra Gümplová, *Sovereignty and Constitutional Democracy*, Nomos, Baden-Baden, 2011; Massimo Donini, *Das Strafrecht und 'der Feind'* Lit Verlag, Berlin, 2007, pp. 10–14; Hans Kelsen, *General Theory of Law and State*, Harvard University Press, Cambridge, 1945; Hans Kelsen, *Pure Theory of Law*, University of California Press, Berkeley, 1967.

[57] Hans Boldt, 'Ausnahmezustand', pp. 371–3. On Thomas Hobbes and Samuel von Pufendorf as intellectual forbears of Schmitt's concept of sovereignty, see Renato Cristi, 'Carl Schmitt on Sovereignty and Constituent Power', in David Dyzenhaus (ed.), *Law as Politics: Carl Schmitt's Critique of Liberalism*, Duke University Press, Durham, 1998, p. 193.

[58] Jennifer Illuzzi, 'Negotiating the "State of Exception:" Gypsies' Encounter with the Judiciary in Germany and Italy, 1860–1914', *Social History* 35(4), 2010, pp. 418–38; Agamben, *Homo Sacer*.

[59] Agamben. *Homo Sacer*, p. 114.

[60] Matthew P. Fitzpatrick, 'The Pre-History of the Holocaust? The *Sonderweg* and *Historikerstreit* Debates and the Abject Colonial Past', *Central European History* 41, 2008, pp. 477–503.

within which political existence occurred was not a prelude to the annihilation of bare life. However valuable such theories of thanatopolitical interventions might be for an analysis of events in twentieth-century German history, or for comparative genocide studies more generally, they seems inapplicable to the broader history of *Kaiserreich* expulsions.[61]

Alongside the promulgation of exceptional laws such as the Jesuit and Socialist laws, German authorities also used other legal avenues to deal with perceived *Ausnahmezustände* by introducing new local ordinances and regulations, by applying existing legal strictures to new purposes, or by reiterating the existence (and heightened relevance) of hitherto ignored or seldom used legal powers. All of these enabled the use of expulsions as a means of coping with perceived political crises. Crucially, these various legal manipulations did not all take place at the level of the central imperial government, but were also undertaken by local authorities, ranging from police officials through to provincial governors, often at the behest of non-state actors. To accentuate the differences between the various ways in which mass expulsions were enacted in Germany between 1871 and 1914,[62] this book proposes a tripartite typology which differentiates between the distinct political and legal contexts within which they occurred. Identified here are 'democratic expulsions', 'state-based expulsions', and 'extra-constitutional expulsions'. These designations refer to their constitutional status, their socio-political origins, and the loci of agency enabling the expulsions, rather than the magnitude or implied 'importance' of the expulsions. This tripartite typology has been designed so as to enable an assessment of whether political situations described by contemporaries as exceptional revealed a default reversion to authoritarian centralism or, alternatively, the continued functioning of flows of power between citizens and state institutions and the regularized deployment of constitutionally normative positivist law by those vested with legal competency by the German *Rechsstaat*.

The 'democratic expulsions' scrutinized here are those already referred to; namely those enabled by the 1872 Jesuit Law and the 1878 Socialist Law, both of which sought to excise perceived enemies of the new state from their sustaining milieu. They were 'democratic' in the sense that they were brought about by parliamentary means, with *Reichstag* approval and through the generation of a political consensus inside and outside the *Reichstag*. They were also democratic in so far as an overwhelming majority of Conservatives, National-Liberals, and Progressive Party liberals voted for them as measures that they believed would necessarily strengthen the body politic.

'State based expulsions' found their constitutional sanction at the level of the individual states, in accordance with the federalist principles of decentralized power. The degree of political power enjoyed by the individual states was a constant source of complaint for German jurists who repeatedly bemoaned the persistence

[61] On twentieth-century German thanatopolitics, see too Roberto Esposito, *Bios, Biopolitics and Philosophy*, University of Minnesota Press, Minneapolis, 2008, pp. 110–45.

[62] For an introduction to the expulsion provisions of other European states, see Conrad Bornhak, 'Die Ausweisung fremder Staatsangehörigen', pp. 111–16.

of *Kleinstaaterei* amongst the constituent state governments within the empire. Indeed, the federal, 'emphatically devolved' nature of the German Empire,[63] was such that for the Bavarian particularist Max von Seydel, the powers enjoyed by the various state governments were evidence that, ultimately, sovereign power resided not with Berlin, but with the empire's various states and their respective rulers.[64] One of the powers devolved to Germany's individual states under imperial law was the right to expel non-citizens.[65] As the following shows, however, state-based expulsions were not merely the expression of the sovereign power of state legislatures, but emerged from far more local pressures. In fact, these expulsions began as intensely regional or provincial affairs. In the cases of the expelled Poles, Danes, and so-called 'Gypsies', this meant that the impetus and subsequent conduct of expulsions did not emanate from the *Landtag* or officials at the political centre of the state, but from local, provincial authorities, and civic institutions. Notwithstanding the fact that the state-based expulsions occurring in Prussia took place within a jurisdiction characterized by the three-tiered franchise (which Kühne has argued acted to 'preserve the decisive position of forces hostile to democracy'),[66] it was not the Prussian *Landtag* (much less its *Herrenhaus*, described by Hartwin Spenkuch as a 'bulwark' of Prussia's authoritarian status quo),[67] that operated as the primary site of power. Such central institutions were quite often sidelined by the agency of local authorities responding to intensely localized pressures, with only belated appeals to the political centre to strengthen and support their local initiatives. Astonishingly in the Prussian case, the *Landtag*, was regularly called upon to validate expulsion measures only once they had already been debated and decided upon locally, or even after they had occurred. Even more belatedly, the power of Prussia's local

[63] Christopher Clark, *Kaiser Wilhelm II: A Life in Power*, Penguin, London, 2009, p. 35.

[64] Correctly, this was contested by the left liberal advocate of centralized power, Georg Jellinek, who asserted that the scope for sovereign action by the individual German states and their monarchs within the empire was circumscribed by the limits imposed by the imperial constitution. For Jellinek, the imperial centre had 'the authority to decide on competencies'. The debate resulted from the lack of clarity on the precise locus of sovereignty, which was an intentional product of the negotiations that created the empire, as Dieter Grimm has made clear. Whether sovereignty resided with the imperial government or with the individual states was deliberately left unanswered during constitutional discussions in the 1860s and early 1870s as part of a Prussian strategy of maintaining a tactical ambiguity on the issue so as to avoid the charge from independently-minded Southern Germans, in particular Bavarians, of a Prussocentric concentration of power in Berlin. See Georg Jellinek, *Die Lehre von der Staatenverbindungen*, Alfred Hölder, Vienna, 1882, pp. 34–5; Peter C. Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law: the Theory and Practice of Weimar Constitutionalism*, Duke University Press, Durham, 1997, pp. 13–30; Dieter Grimm, 'Was the German Empire a Sovereign State?', in Müller and Torp (eds), *Imperial Germany Revisited*, pp. 57–62; Philip Zorn, 'The Constitutional Position of the German Emperor', *Annals of the American Academy of Political and Social Science* 14, 1899, pp. 73–93; Rudolf Schlesinger, *Federalism in Central and Eastern Europe*, Routledge, London, 2001, pp. 23–5; Margaret B. Crosby, *The Making of a German Constitution*, pp. 168–70.

[65] §39, *Strafgesetzsbuch* as proclaimed in the *Reichsgesetzblatt* (24), 14 June 1871, p. 134., Die Polizei-Aufsicht hat folgende Wirkungen…2. die höhere Landespolizeibehörde ist befugt, den Ausländer aus dem Bundesgebiete zu verweisen'.

[66] Kühne, *Dreiklassenwahlrecht*, p. 583.

[67] Hartwin Spenkuch, *Das Preußische Herrenhaus. Adel und Bürgertum in der Ersten Kammer des Landtages, 1854–1918*, Droste Verlag, Düsseldorf, 1998, p. 19.

officials to enact the expulsion measures was contested by some in the *Reichstag*, who saw in such expulsions a danger to the international reputation and legal commitments of the empire as well as an infringement on the rights of the *Reichstag* to deliberate on matters of foreign policy. In 1886, the *Reichstag* even disassociated itself from the expulsions carried out by Prussia's provincial authorities, all the while remaining powerless to stop or reverse them. Crucially, centralist objections were never successful in overturning the agency of local officials, whose actions were protected by the federal nature of the empire.[68]

The 'extra-constitutional expulsions' explored here are those that occurred in Alsace-Lorraine and Southwest Africa. The term describes acts in anomalous legal spaces where the ordinary provisions of the constitution and the legal guarantees of the *Rechtsstaat* did not apply because they were territories not explicitly mentioned as being covered by the provisions of Article One of the German constitution.[69] This apparently extra-constitutional legal status enabled extraordinary measures to be undertaken without reference to the usual regime of constitutional rights. As regions of extraordinary sovereignty, they appear as the most likely sites for meta-juridical sovereignty, yet even in both Southwest Africa and Alsace-Lorraine the expulsions undertaken were consistently enabled not by the proclamation of exceptional laws, but by pre-existing powers and practices that regulated the particular legal status of these two territories. Furthermore these expulsions were, once again, the product of decision making not at the highest level of the imperial government, but rather that of local authorities reacting to the immediate pressures of frontier conditions. As Alsace-Lorraine's governors Edwin von Manteuffel and Chlodwig zu Hohenlohe-Schillingsfürst and a succession of governors in the Southwest African colony demonstrated, the principle of local authority was enormously difficult to countermand unless that rule had been clearly subject to abuse, as it was under Lothar von Trotha in German Southwest Africa in 1904.

By scrutinizing how and why these three different forms of expulsions occurred and by using the test offered by Schmitt's benchmark question of 'who decides' as a way of assessing the extent and limits of political agency and sovereign power in Imperial Germany, this book takes seriously Helmut Walser Smith's claim that longer-term continuities are discernible in German history in 'the imagination of expulsion, in the severing of ties to others'.[70] By looking at the nature of the German *Rechtsstaat* during periods of crisis prior to World War One, this study demonstrates that, while social ties were indeed deliberately severed by mass expulsions, the historical legacy of these legally framed attempts to purge the empire, particularly as pertaining to the mechanics of prerogative power during the Nazi dictatorship, is much less clear.

[68] While explicitly ruling out the power of the Kaiser or the *Reichstag* to direct states to stop expelling people, Conrad Bornhak suggests a theoretical power of oversight for the *Bundesrat*; one that was never exercised. See Bornhak, 'Die Ausweisung fremder Staatsangehörigen', pp. 120–3.

[69] For Article One of the Constitution, see *Bundes-Gesetzblatt* 16, 20 April, 1871, 'Gesetz betreffend die Verfassung des Deutschen Reichs, Vom 16 April, 1871', pp. 64–5.

[70] Helmut Walser Smith, *The Continuities of German History: Nation, Religion and Race across the Long Nineteenth Century*, Cambridge University Press, Cambridge, 2008, p. 233.

PART I

DEMOCRATIC EXPULSIONS

1

The Road Not Taken

Germany's Penal Colony Debate

By far the most common method employed by European states in the nineteenth century for expelling unwanted segments of the population was the introduction to the penal code of the punishment of transportation or exile. By forcing those to be expelled through the criminal justice system, the possibility of applying the sentence of transportation or exile to remove those with citizen rights was opened up. Yet, unlike most European powers, the conversion of undesirable elements of the body politic into a source of unfree labour for colonial purposes never found widespread approval in Germany, despite several *Reichstag* discussions on the issue and numerous proposals from enthusiastic penological and colonial experts.

The utility of penal colonies as sites for expelled citizens (and non-citizens) for a number of major European powers has often been overlooked. While the majority of those sentenced to transportation were criminals, Britain sent significant numbers of political dissidents, Irish Fenians, and even American republicans to Australia.[1] For its part Russia sent nihilists to Sakhalin,[2] while the French sent thousands of political prisoners to Algeria and Cayenne.[3] Part of the difficulty in recognizing the importance of penal colonialism as a means of dealing with recalcitrant citizens during the nineteenth century has been a theoretical one, with accounts of nineteenth-century European penology often mistaking Foucault's theoretical claim of a rise to prominence of the Benthamite panopticon for an historical description of actually prevailing nineteenth-century penological practices.[4] As is well known, Foucault viewed the surveillance of criminal bodies made docile from a veiled centre of power as constituting a paradigmatic hallmark of the modern state's inscription of power. Yet, as a host of European examples show, it was the convict colony and not the panopticon that remained central to the penal policies of many European states.[5] Unconvinced

[1] George Rudé, *Protest and Punishment: The Story of the Social and Political Protesters Transported to Australia, 1788–1868*, Clarendon Press, Oxford, 1978; Geoffrey Bolton, 'The Fenians are Coming, the Fenians are Coming', *Studies in Western Australian History* 4, 1981, pp. 62–7; Cassandra Pybus and Hamish Maxwell-Stewart, *American Citizens, British Slaves: Yankee Political Prisoners in an Australian Penal Colony 1839–1850*, Michigan State University Press, Michigan, 2002.

[2] Andrew A. Gentes, 'Sakhalin as Cause Celebre: The Re-Signification of Tsarist Russia's Penal Colony', *Acta Slavica Iaponica* 32, 2012, pp. 58–9.

[3] Stacey Renee Davis, 'Turning French Convicts into Colonists: The Second Empire's Political Prisoners in Algeria, 1852–1858', *French Colonial History* 2, 2002, pp. 93–113.

[4] Michel Foucault, *Discipline and Punish*, Penguin, London, 1991, pp. 195–228.

[5] James J. Willis, 'Transportation versus Imprisonment in Eighteenth- and Nineteenth-Century Britain: Penal Power, Liberty, and the State', *Law and Society Review* 39(1), 2005, pp. 171–210;

of the merits of prisons as institutions deterring offenders or encouraging reform, many nineteenth-century reformers looked towards more active, applied forms of penology that would rehabilitate hitherto ungovernable citizens through character forming labour. For such reformers, a day would come 'in the not too distant future, when the last prisoner will be pitied in his cell, just as the last witch has been burnt on the pyre'.[6]

Europe's penal colonies operated according to principles in direct contradistinction to those of the Benthamite panopticon. Instead of centralized surveillance within a penitentiary setting, states such as Britain, France, and Russia opted for the expulsion of unwanted citizens via the criminal justice system to the imperial periphery as a means of transforming their criminality into a harnessed and state-directed form of colonizing power. Germany's lack of convict colonies, it should be emphasized, should not be seen as evidence that penal colonialism had by 1871 run its course or had come to be seen as anachronistic by other European powers. Although Britain ended its most famous era of convict transportation to the antipodes with its shipment of Fenians to Western Australia in 1868 (courtesy of protests from Australia's Anti-Transportation Movement and British Radicals such as Charles Molesworth),[7] the British Empire continued to make use of penal settlements elsewhere well into the twentieth century, ending only with the closure of facilities on the Andaman Islands in 1945.[8] French Guiana had only begun as a civilian penal colony in 1854 and continued in this role into the next century, while New Caledonia became a destination for exiled French citizens after 1867, with its role greatly expanded after 1885.[9] The Russian island of Sakhalin too

Robert V. Jackson, 'Jeremy Bentham and the New South Wales Convicts', *International Journal of Social Economics* 25(2–4), 1998, pp. 370–9; Peter Redfield, 'Foucault in the Tropics: Displacing the Panopticon', in J. X. Inda (ed.), *Foucault and the Anthropology of Modernity*, Blackwell, Oxford, 2005, pp. 50–79; Stephen A. Toth, 'The Lords of Discipline. The Penal Colony Guards of New Caledonia and Guyana', *Crime History and Societies* 7(2), 2003, pp. 2–17; contra Ann L. Stoler, *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*, Duke University Press, Durham 1995, p. 15. See too Joan Kerr, 'Panopticon Versus New South Wales', *Fabrications. The Journal of the Society of Architectural Historians, Australia and New Zealand* 1, 1989, p. 5; John Gascoigne, *The Enlightenment and the Origins of European Australia*, Cambridge University Press, Cambridge, 2003, p. 127. For Evans' assessment of the applicability of Foucault's claims for the German case, see Richard J. Evans, *Szenen aus der deutschen Unterwelt. Verbrechen und Strafe, 1800–1914*, Rowohlt Taschenbuch, Hamburg, 1997, pp. 356–70.

[6] F. W. Schubert, 'Die Deportation als Strafmittel', *Jahrbücher für Kriminalpolitik und innere Mission* 2, 1898, p. 13.

[7] For the contested historiography of the end of Britain's transportation of convicts to Australia, see David A. Roberts, 'Beyond the Stain: Rethinking the Nature and Impact of the Anti-Transportation Movement', *Journal of Australian Colonial History* 14, 2012, pp. 259–79; Isobelle Barrett Meyering, 'Abolitionism, Settler Violence and the Case against Flogging: A Reassessment of Sir William Molesworth's Contribution to the Transportation Debate', *History Australia* 7(1), 2010, pp. 6.1–6.18.

[8] Hamish Maxwell-Stewart, 'Convict Transportation from Britain and Ireland 1615–1870', *History Compass* 8(11), 2010, p. 1222. On the role of the Andaman Islands for British India, see Taylor C. Sherman, 'From Hell to Paradise? Voluntary Transfer of Convicts to the Andaman Islands, 1921–1940', *Modern Asian Studies* 43(2), 2009, pp. 367–88.

[9] On French penal colonialism, see Stephen A. Toth, *Beyond Papillon: The French Overseas Penal Colonies, 1854–1952*, University of Nebraska Press, Lincoln, 2006; Stephen A. Toth, 'Colonisation

operated as a penal colony until 1906.[10] In removing dangerous elements from the body politic and transplanting them to the colonial periphery, these European states saw themselves as providing a form of forcible social mobility, transforming prisoners into productive citizens through forced labour. At the same time, the benefits of this unfree labour for the development of penal colonies in inhospitable regions continued to accrue. Once convicted subjects had been forcibly transported from the imperial metropole, their hitherto unrealized use-value was recovered for the state in the shape of their labours as a colonizing vanguard.

It was for predominately theoretical rather than historical reasons that Foucault had to characterize penal colonialism in *Discipline and Punish* as an 'abandoned' project of 'no real economic importance'.[11] This historical difficulty at the heart of Foucault's theory of modern governmentality was a product of his replication of Jeremy Bentham's idiosyncratic insistence on the primacy of the panopticon. Foucault's account, however, obscured the extent to which Bentham's eccentric model was forged in direct and polemical opposition to the colonizing project actually embraced by many European penal reformers.[12] Objecting to the 'unexemplary' nature of colonies, the remoteness of which negated his desire for constant surveillance, Bentham was forced to watch in frustration as his panopticon was continuously passed over in favour of transportation and other model prison experiments.[13] In a desperate attempt to halt penal colonialism, Bentham even launched an unsuccessful legal challenge to the constitutionality of the powers of the governor of New South Wales. To his perpetual chagrin, however, penal colonial projects flourished.[14] The apparent success of transportation 'killed the panopticon project',[15] as convict colonies continued to be seen by the British, French, and Russian governments as a singularly useful means of managing an unruly surplus population.

Depending on their own views on social reform, German colonial and legal theorists calibrated their ideas on using the criminal justice system to send troublesome citizens into exile by triangulating between the experiences of Britain, France, and Russia. In particular, for those who sought to mobilize exiled Germans for the task of creating a *Neu-Deutschland* it was the apparent success of Australia, as a penal colony which had given rise to a new British nation, that was presented as compelling evidence for the rationality of expelling undesirable

or Incarceration', *Journal of Pacific History* 34(1), 1999, pp. 59–74; Colin Forster, 'French Penal Policy and the Origins of the French Presence in New Caledonia', *Journal of Pacific History* 26(2), 1991, pp. 135–50.

[10] For Sakhalin in the 1880s and 1890s, see for example Andrew A. Gentes, 'No Kind of Liberal: Alexander II and the Sakhalin Penal Colony', *Jahrbuch für Geschichte Osteuropas* 54(3), 2006, pp. 321–44.

[11] Foucault, *Discipline and Punish*, pp. 272, 279.

[12] Kerr, 'Panopticon versus New South Wales', p. 5.

[13] Robert Alan Cooper, 'Jeremy Bentham, Elizabeth Fry and English Prison Reform', *Journal of the History of Ideas* 42(4), 1981, pp. 675–90; Barbee-Sue Rodman, 'Bentham and the Paradox of Penal Reform', *Journal of the History of Ideas* 29(2), 1968, pp. 197–210.

[14] Gascoigne, *The Enlightenment and the Origins of European Australia*, pp. 41–2, 125–7.

[15] Jackson, 'Jeremy Bentham and the New South Wales Convicts', p. 378.

citizens to colonial settings.[16] These enthusiastic commentators praised the British for having taken the crudest of human raw materials and fashioning a series of thriving colonial settlements. For Germans opposed to penal colonialism, however, the Australian example was less salutary; at best a once acceptable solution that had been discontinued by the British.[17] To counter the Australian example, critics pointed to Russian Siberia[18]—in particular Sakhalin—and the so-called 'dry guillotine', of Cayenne in French Guiana as case studies that illustrated the negative aspects of penal colonialism.

As early as 1859, Franz von Holtzendorff had declared that the outlines for a future 'global' history of penal colonization were provided by the respective experiences of Britain and France, with Australia showing the potential for success and Cayenne showing the inhumanity they could engender.[19] In 1895, Friedrich Freund could still comment that 'England and France are the hitherto acknowledged exemplars of the bold foundation of penal colonies'.[20] With regard to Russia, Ernst Alfred Fabarius wrote in 1896 that:

> If we exclude those manifestations of deportation that in past and recent times offer only evidence of political tyranny and pure injustice, namely classic examples such as Russian Siberia and Napoleonic France's Cayenne, then only the only examples that remain are England's deportation to Australia, France's transportation to Guiana and New Caledonia, and Russia's recent colonisation of Sakhalin.[21]

Yet it was not only Britain, France, and Russia that piqued the interest of German theorists. Portugal had a centuries-long history of using Angola as a penal colony,[22] while Spain had also converted the North African enclave Ceuta into a penal colony.[23] German advocates of transportation made abundant use of this international context, studying closely the arguments offered by European states actually engaged in the practice. They were also attentive to the most current international scholarship regarding penal colonialism, surveying the treatment

[16] Johannes H. Voigt, 'Die Deportation—ein Thema der deutschen Rechtswissenschaft und Politik im 19. und 20. Jahrhundert', in Andreas Gestrich, Gerhard Hirschfeld, and Holger Sonnabend (eds), *Ausweisung und Deportation. Formen der Zwangsmigration in der Geschichte*, Franz Steiner Verlag, Stuttgart, 1995, pp. 83–5; Johannes H. Voigt, 'Transportation to Australia: A Model for Germany?', in Andrew Bonnell, Gregory Munro, and Martin Travers (eds), *Power, Conscience and Opposition: Essays in German History in Honour of John A Moses*, Peter Lang, New York, 1996, pp. 467–80.

[17] R. Braune, 'Die Deportation der Gefangenen', *Blätter für Gefängnisskunde* 30, 1896, p. 12.

[18] For Prussia's pre-unification trial of sending its prisoners to Siberia, see Evans, *Szenen aus der deutschen Unterwelt*, pp. 44ff.

[19] Franz von Holtzendorff, *Die Deportation als Strafmittel in alter und neuer Zeit und die Verbrechercolonie*, Johann Ambrosius Barth, Leipzig, 1859, pp. xii–xiv.

[20] Friedrich Freund, 'Ueber Strafkolonisation und Einrichtung überseeischer Strafanstalten', *Preußische Jahrbücher* (81), 1895, pp. 502–37.

[21] Ernst Alfred Fabarius, 'Deportation von Verbrechern nach den deutschen Kolonien?', *Allgemeine Missions-Zeitschrift* 23, 1896, p. 509.

[22] Gerald J. Bender, *Angola under the Portuguese: The Myth and the Reality*, University of California Press, Berkeley, 1978, pp. 74–94.

[23] Robert Aldrich and John Connell, *The Last Colonies*, Cambridge University Press, Cambridge, 1998, p. 220. For a sensationalist report of conditions in Ceuta in 1902, see Fannie B. Ward's article 'Spain's Penal Colony', *The Spokesman Review*, 16 February, 1902, p. 21.

of the issue in countries as diverse as Italy, India, Sweden, Belgium, Portugal, Spain, New Zealand, Brazil, Chile, China, and Peru. Similarly, the deliberations of experts at international conferences were also discussed, including the findings of the penology congresses held in Stockholm in 1878, Rome in 1885, St Petersburg in 1890, and Paris in 1895 where the issue was examined in detail.[24] Eager German penologists proposing convict transportation hoped that, given this favourable international context, their arguments for the management of societal threats through transportation might be heard sympathetically by the *Reichstag*. Yet the range of reasons offered by German jurists and penological reformers never convinced the *Reichstag* to embrace penal exile.

This engagement with transnational penological discourse and practice did not mark the limits of the German debate, particularly given that the global experience of penal colonialism offered German theorists and politicians a discursive site sufficiently heterogeneous to allow diametrically opposed 'lessons' to emerge. Given the malleability of the international context, German theorists could easily invest their domestic arguments regarding the desirability of expelling socially and politically undesirable elements of the German population to colonial sites with equally compelling evidence from elsewhere. The examples of British Australia, French Guiana and New Caledonia, and Russian Siberia and Sakhalin offered an abundant stock of contradictory examples and principles which German penologists and political figures could and did use to buttress their equally contradictory arguments,[25] allowing them to appear to be drawing upon pan-European developments, all the while addressing the specifics of Germany's imperial development.

Focused squarely on German conditions, a number of German penologists urged the German government to emulate other empires by embracing penal colonialism, to utilize 'liminal spaces for liminal subjects at the peripheries of the Empire'.[26] These German theorists shared with their counterparts elsewhere a range of social and imperial assumptions. In particular, a commitment to the global processes of demographic transfer and racialized developmentalism engendered by European settler colonialism was an obvious precondition for any plan for a colony of exiles.[27] Also shared by those discussing overseas penal colonies

[24] Karl Krohne, 'Die Frage der Strafkolonien für Deutschland', *Die Grenzboten* 38(2), 1879, pp. 494–511; Schubert, 'Die Deportation als Strafmittel', p. 13, Robert Heindl, *Meine Reise nach der Strafkolonien*, Ullstein, Berlin, 1912.

[25] Holtzendorff, *Die Deportation als Strafmittel*, pp. xii–xiv, Freund 'Ueber Strafkolonisation', pp. 502–37, Johannes H. Voigt, 'Die Deportation', pp. 83–102; Andrew A. Gentes, 'The Institution of Russia's Sakhalin Policy from 1868–1875', *Journal of Asian History* 36(1), 2002, pp. 1–31.

[26] Warren Rosenblum, *Beyond the Prison Gates: Punishment and Welfare in Germany, 1850–1933*, University of North Carolina Press, Chapel Hill, 2009, p. 95. For Rosenblum's critique of both Michel Foucault and Richard J. Evans, and his sense of the 'utopian' social function of colonial penology see pp. 75–6. For sketched outlines of German discussions regarding deportation, see Cathrin Meyer zu Hoberge, *Strafkolonien—'eine Sache der Volkswohlfahrt'? Die Diskussion um die Einführung der Deportation im Deutschen Kaiserreich*, Lit Verlag, Münster, 1999; Hans Schlosser, 'Deportation und Strafkolonien als Mittel des Strafvollzugs in Deutschland', in Mario Da Passano (ed.), *Europäische Strafkolonien im 19. Jahrhundert*, Berliner Wissenschafts-Verlag, Berlin, 2006, pp. 41–53.

[27] On these processes, see Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview*, Palgrave Macmillan, New York, 2010, pp. 33–52.

was a burgeoning biopolitical belief in the ability of the state to reform and recast individuals, a belief underwritten by a disciplinary understanding that the causes of an individual's obduracy were predominantly social rather than biological. The question of whether settler colonialism and rehabilitation were best undertaken simultaneously was, however, more contentious. The idea that rehabilitation was best achieved by expelling citizens to the colonies was not entirely self-evident to many who were committed to both separately. While many penologists were convinced that the German state needed to combat crime or political deviance by employing targeted demographic solutions which would shape the conditions of the lives of Germany's more recalcitrant citizens, that these solutions were colonial ones was often disputed.

For those in favour of penal colonialism, it was seen as self-evident that forced emigration enhanced the life opportunities of the urban poor, the politically wayward, and criminals of circumstance. Although envisioned in the first instance as a form of punishment capable of deterring those prone to criminality or political unorthodoxy, the penalty of transportation was also supposed to be an enabling rather than disabling sentence. Its claims to legitimacy as a tool of social engineering and political control rested on the premise that the colonial world was a world of increased possibilities where hitherto surplus social segments could be transformed into a cohort of productive, highly valued citizens. Even noted opponents of convict colonialism such as Alexander Merensky noted that the utility of transportation was already well understood by those amongst the urban poor who had, he argued, resorted to 'self-deportation' through mass emigration to better their lives.[28]

That this redemptive biopolitics was articulated through the language of individual opportunity does not mean that the advantages of ridding Germany of unwanted elements were overlooked. In fact, the idea of deportation bled into emerging eugenicist plans for actively shaping the body politic, something pointed out by the critic Ernst Alfred Fabarius, who lambasted the attempt to 'cleanse the Old World of criminals while populating a new one with them'.[29] Some of those advocating penal colonies called for a 'cleansing of the land from elements which jeopardised its safety', and the 'annihilation of the criminal bacillus'.[30] Anthropologists were at the forefront of this eugenicist push, arguing that by deporting criminals, Germany could avoid social degeneration,[31] however political theorists too advocated penal colonies as a way of stabilizing Germany's social demography, warning that 'the current system has failed—we must create a new one if we do not wish for a nation of criminals'.[32] Once transported to the

[28] Alexander Merensky, 'Die Deportation als Strafmittel', *Jahrbücher für Kriminalpolitik und innere Mission*, 2, 1898, pp. 26–35.

[29] Fabarius, 'Deportation von Verbrechern nach den deutschen Kolonien?', p. 512.

[30] F. W. Schubert, 'Die Deportation als Strafmittel', *Jahrbücher für Kriminalpolitik und innere Mission*, 2, 1898, pp. 12–13.

[31] Hans Groß, 'Degeneration und Deportation', *Politisch-Anthropologische Revue. Monatsschrift für das soziale und geistige Leben der Völker*, 4, 1905/06, pp. 281–6.

[32] Max Treu, 'Die Deportation, die Gesellschaft und das Verbrechen', *Zeitschrift für Sozialwissenschaft*, 8, 1905, p. 419.

colonies, it was argued, criminal elements no longer posed a long-term demographic threat, but were transformed instead through necessity into productive contributors to the processes of settler colonialism. Rather than impacting negatively on their new social environs, the Australian and North American examples ostensibly demonstrated to those in favour of transportation that after the initial period of wholesale expulsions had come to a natural end, the convict taint of an erstwhile penal colony could be mitigated by the 'infusion of fresh, pure blood which will heal the sick blood that has been injected'.[33]

Another dimension of the German debate which was shared with other imperial powers was a pan-European presumption that a hierarchical bifurcation between European rulers and non-European ruled was required in colonial settings. Ineluctably the need to realize this power differential demanded the introduction of political strategies that would protect the institutional privilege of Europeans over indigenous peoples and continuously reconfirm whiteness as an attribute of authority. While the relationship between pigmentation and power was rarely questioned, an enduring split emerged on the implications of this political encoding of physical difference for the question of convict colonies. Amongst those against penal colonialism, a sense of imperial *noblesse oblige* prevailed. They maintained that the establishment of a penal colony would represent a breach of faith with the German Empire's indigenous population, which the colonial power had sworn to develop. For example, the colonial activist and secretary of the *Evangelischer Afrika-Verein* Ernst Alfred Fabarius argued that in exchange for territory Germany had promised indigenous peoples Germany's protection. 'Where is the German honour?' he asked, 'if we also unburden ourselves of our criminals, under whose ruinous influence we would degrade the bodies and souls of those natives we have sworn to protect?'[34] In a stark admission of anxiety in the face of a potentially racially mixed colonial population and the collapse of the colonies' socio-racial hierarchy, Fabarius went on to argue that the policy of transportation represented a perpetual risk of broad based, mixed race subaltern rebellions in the colonies, claiming that 'the disaffected convicts would always attempt to make common cause with the natives against the colonial government'.[35]

Pessimistic assessments such as Fabarius' were responded to by those such as Heinrich Reuß, who denied that the indigenous people of German Southwest Africa, the most likely site for any German penal colony, would be harmed by exposure to convicts. In a multi-pronged argument, Reuß argued first that the majority of the colony's indigenous people would in any case inevitably die out, either through assimilation or a general inability to exist under European conditions, due to their inferior 'moral and epistemological standing'. Their extinction rendered moot any concern about the short-term effect of exiled German citizens. Secondly, he saw in the establishment of penal labour conditions a further

[33] Merensky, 'Die Deportation als Strafmittel', p. 30.
[34] Fabarius, 'Deportation von Verbrechern', pp. 558–9.
[35] Fabarius, 'Deportation von Verbrechern', p. 520.

opportunity to educate the small, surviving remnant group of Africans in how to undertake European forms of labour.[36]

Other anti-deportation theorists such as Alexander Merensky, however, supported Fabarius' argument, arguing that the racial prestige of the Europeans must inevitably suffer as a result of bringing indigenous people into contact with German convicts. For Merensky, racial prestige was the conceptual prerequisite for maintaining the political divide between ruler and ruled. As such, its preservation was crucial in colonial settings where indigenous people might persist as a helot labouring class and not simply die out. Importing a malcontented European underclass into German colonies would strike against the precondition for the success of these colonies; namely the training of the natives. Secondly, the sight of unfree labouring Germans would diminish the reputation of the Europeans in the eyes of the colonized, thereby bringing into question their claims to rule.[37]

These concerns were shared by the *Reichstag*, which debated the issue in January 1898. After initially citing the cost of establishing penal colonies as a discouraging factor, the secretary of the *Reichstag*'s Budgetary Commission, Franz von Arenberg, also reported that after a long discussion on penal colonies, the idea had been almost unanimously rejected on politico-racial grounds. On the one hand there had been concerns about the effects of convict labourers on the free white population of the colony. Citing the opinion of the governor of German Southwest Africa, Theodor von Leutwein, Arenberg opined that in other convict colonies, 'deportees were sent by other states to lands where whites had not yet settled, whereas in Southwest Africa the criminals must be brought among honest people'. For Leutwein, he stressed, 'the question of transportation to Southwest Africa should have been raised long ago, before whites had settled there'.[38] On the other hand, the *Reichstag* was concerned about the effect that the transportation of German convicts would have on white hegemony over Africans. This was an issue that the Budgetary Commission had discussed in detail. This sub-committee had deferred to the judgement of the State Secretary for the Imperial Office of Justice, Dr Rudolf Nieberding, who warned the committee that 'the authority of the white population must greatly suffer if whites are brought there in the face of the coloured population to serve their sentence'.[39]

Outside the *Reichstag*, these concerns occasionally intersected with dystopian visions of sexual misrule, alarmist concerns about the destruction of patriarchal domestic order, and outright fears of miscegenation. These concerns were perhaps best summarized by Karl Krohne's lurid portrait of an Asian penal colony in the family magazine *Die Grenzboten*:

[36] Heinrich Reuß, 'Ist die Deportation vom christlichen Standpunkte aus zu rechtfertigen', *Die christliche Welt* 11, 1897, pp. 617–18.

[37] Merensky, 'Die Deportation als Strafmittel', pp. 32–3.

[38] Arenberg, *Verhandlungen des Reichstages*, 12 February 1898, p. 988.

[39] Nieberding, as cited by Bruck in Felix Bruck, *Die Gegner der Deportation*, M&H Marcus, Breslau, 1901, pp. 67–8.

> What emerges from this mass of people of all races and nations—Chinese, Hindus, Malays, Parsis, Blacks, Whites, Arabs and whatever else which might converge in the emporium of the east… requires no description. One can simply imagine what type of bestial sexual debauchery occurs… What emerges from so-called marriages [of two prisoners] here? The woman becomes the common property of a large number of other prisoners who work for the official husband who then indulges himself in doing nothing. That this is no fantasy is proven by the children that come from such a marriage, the first of which is perhaps Chinese, the second Malay, the third black, although the official father is actually a man from Madras.… Is this then the ideal of the convict colony that is being urged upon Germany?[40]

Those arguing for the expulsion of Germany's unwanted citizens to a penal colony saw the question of colonial power quite differently. They were split between those who saw no ill effects resulting for the indigenous population and those who, like Heinrich Reuß, accepted, indeed relied upon an underlying genocidal tendency within settler colonialism, which made the long-term persistence of indigenous people unlikely. On this basis, any social planning that presupposed an ongoing responsibility to such disappearing non-historical peoples was misguided. With the issue framed in this way, the question of whether the extinction of natives occurred in a colony populated by free settlers or convicts was an irrelevance.[41]

This view was most forthrightly put during the furore following the surprise refusal of Germany's legal fraternity to endorse penal colonialism at the conference of German jurists in Posen in 1898. Swayed by the arguments of prize winning anti-transportation author Adolf Korn and those of Chief Imperial Prosecutor (*Oberreichsanwalt*) Oskar Hamm, the conference voted overwhelming that 'deportation is not a suitable means of punishment for Germany and a trial of deportation is not advisable'.[42] Outraged by the decision taken in his absence, Felix Bruck took exceptional umbrage with what he considered to be Hamm's disingenuous lip service to the false and ornamental civilizing claims of colonialism made by the state and especially missionaries, who had argued that importing German convicts in Africa was not in line with the promise to bring European culture to Africans. The German Empire, Bruck argued, like all states which had taken possession of African territories, had hardly done so 'in order to cultivate the natives'. Rather, the key consideration had always been the material interests of the German Empire.[43] On precisely what these interests were there could be room for debate, but to hide behind the fig leaf of a false humanitarianism was, Bruck fumed, intellectually dishonest.

On the question of 'white prestige' and whether the political sensibilities of Africans would be adversely affected by the sight of German convicts, Bruck was similarly forthright. Alluding to Nieberding's role in dissuading the *Reichstag* committee from supporting penal settlements, Bruck rejected the notion that

[40] Krohne, 'Die Frage der Strafkolonien für Deutschland', pp. 506–7.
[41] Treu, 'Die Deportation', pp. 419–20.
[42] Bruck, *Die Gegner der Deportation*, pp. 92.
[43] Bruck, *Die Gegner der Deportation*, pp. 90–1.

Africans were under any illusions about the true nature of Europeans and advocated disregarding the interests of Southwest Africa's indigenous peoples, given the historical importance of penal colonialism for Germany:

> That whites can commit crimes is something that the African natives have never doubted since meeting whites. The further perception that whites are strictly punished for their crimes can only have a salutary effect upon the moral development of the natives by raising their sense of justice. The 'authority of the white regime' has been more damaged in the eyes of the natives by the dereliction of duty of our colonial officials than it could be by the sight of our deported convicts. For Southwest Africa, the only relevant example here, the objection has little meaning, because this protectorate is as good as empty of people. Certainly in terms of the great social importance deportation has for our own nation it can be of little concern what a handful of Herero or Hottentots think of our white convicts.[44]

This view was supported by another supporter of penal colonies who drew on the Hegelian imperatives of world history to demand that German *Realpolitik* override any misplaced concerns regarding the native population:

> Politicians can only deal with colonial policy as a question of power which a nation solves to its own benefit if it has a significant surfeit of intellectual culture, power and human strength and therefore decides to send this excess over its borders. Whether by such eruptions of strength by great peoples a few 'poor heathens' are treated without mercy and are pushed to the wall, the annals of world history need not concern itself. Since the days of the great migrations, entire nations, entire peoples and entire empires have perished just as today tribes of African Bushmen disappear in the face of civilisation. That the Earth belongs to the strong is a law of nature under which we all exist. . . . All minor moral and religious doubts disappear before a single question: is deportation useful to us? And this question can only be answered in the positive.[45]

Albeit in a more guarded form, such sentiments had been present since the earliest German work on penal colonialism, with Franz von Holtzendorff's foundational 1859 work ambivalent about precisely what the destruction of indigenous societies meant for the future of transportation. On the one hand he voiced his outrage regarding the treatment of the Aboriginal peoples of Australia by its exiled settlers, roundly condemning the murderous practices of those inhabiting the frontier zones. Yet, in doing so, he did not dispute the historical necessity of the convict colony's underlying genocidal processes, instead confirming its inevitability in Hegelian terms:

> Too weak for resistance against the progress of the Europeans, incapable of understanding or adopting a foreign culture, they cannot be saved from their world historical fate of destruction, like the Indians of North America who were killed by the 'sweet poison' of Anglo-Saxon civilisation, and who discovered 'the spiritual' only in drinking spirits. The tales portraying the cruelties of the Spanish conquerors of

[44] Bruck, *Die Gegner der Deportation*, pp. 67–8.
[45] Anon, cited in Fabarius, 'Deportation von Verbrechern', pp. 565–6.

> South America, tales related in vivid details even in England, pale in comparison to the permitted, planned and calculated poisoning of the indigenes of Australia by English settlers. Arsenic is placed in food, which is then placed on paths where hungry blacks might be expected. In the end it was completely left to the settler's conscience to proceed with poison in the wilderness as they wished. The savages apparently only had themselves to blame if they didn't know what arsenic was.[46]

So too, the indigenous peoples of French Polynesia, a site chosen by the French in June 1850 as a site for penal colonies, were also seen as predestined for extinction, with Holtzendorff reporting of the Marquesas Islands,

> . . . the indigenous population of these islands are entirely governed by the exact same laws of decline and disappearance as those of Van Diemens Land and the Australian continent. As different as the English and the French appear on European soil, for the crude peoples of the South Seas, their appearance and contact with them has had precisely the same destructive influence.[47]

The tension between the soft Eurocentrism manifest in the demand that Europe's civilizing duty in Africa be fulfilled without recourse to settling its exiled recalcitrant citizens there and the hard Eurocentric dogma of genocidal iron laws of historical development which rendered the effect of German exiles on indigenous peoples irrelevant was ultimately resolved by Holtzendorff in favour of the latter by discursively rendering colonial sites such as Australia as an anachronistic space hitherto belonging to pre-history. Here the 'instinct driven' Aborigines could not resist the Europeans because of their epistemological shortcomings which saw them locked in an eternal present, incapable of historical consciousness and therefore non-historical peoples. European violence was deplorable but historically necessary, and was mitigated for Holtzendorff by the inferred pre-modern barbarity of indigenous peoples, which he argued was exemplified by practices such as sanctioned infanticide which necessarily had to be expunged.[48] For Holtzendorff, that penal colonies were lethal to indigenous peoples was a distasteful fact that was nonetheless in keeping with the unfolding of broader historical laws. These same historical laws would see the exiled citizens of Europe play a role in Europeanizing the extra-European world.

The acknowledgement of its potentially genocidal effects on indigenous peoples notwithstanding, Holtzendorff was determinedly optimistic about the chances of social mobility and low recidivism rates afforded to European criminals sent to penal colonies, arguing in 1859 that both Tasmania and New South Wales would eventually not only come to terms with their penal pasts, but would come to prize convicts as founders of a nation:

[46] Holtzendorff, *Die Deportation als Strafmittel*, pp. 198–9.
[47] Holtzendorff, *Die Deportation als Strafmittel*, p. 564.
[48] Holtzendorff, *Die Deportation als Strafmittel*, pp. 199–202. As in many societies, infanticide was practised amongst some Australian Aborigines for infants of low viability and extremely rarely as a result of a misconception that twins were the result of taboo sexual encounters. See Gillian Cowlishaw, 'Infanticide in Aboriginal Australia', *Oceania* 48(4), 1978; Helen L. Ball and Catherine M. Hill, 'Re-evaluating Twin Infanticide', *Current Anthropology* 37(5), 1996, pp. 856–63.

> The time will eventually come, when the colonists of New South Wales and Van Diemens Land will no longer be shamed and fearful of the memory of their original criminal heritage, when in regard to their blossoming land and the overall noticeable civility of the criminals, those that came to the land in 1788 will come to be recognised as their forbears. Like the debt owed to them, it will be acknowledged, that the good that they were forced to do remained and the evil that they could have done was either freely avoided or through a progressive training gradually came to an end. The heirs of a society grounded in criminal beginnings can boldly claim its comparison with the descendants of those Puritans whose strength of morality steered them across the Atlantic Ocean so that they might not become witnesses to the loose morals that characterised the upper classes of society in the seventeenth century.[49]

Expelling unwanted citizens to reform-oriented penal colonies like those in Australia was seen by Holtzendorff as a form of enlightened social policy. He was not, however, as generous when it came to describing the French penal settlements in Guiana. With regard to Cayenne, Holtzendorff was unequivocal:

> Deportation to Cayenne is absolutely on the same level as the death sentence. The terrorism of the guillotine pales in comparison to the horror of such systematic cruelty carried out with intent and cold calculation. . . . The deportation of political criminals to such a place represents without doubt one of the darkest parts of recent French history, an example that cannot fail to bear it fruits in the future. Such a punishment steps completely outside of the bounds of justice. It damages the reputation of the law and undermines its authority.[50]

Deeming its climate thoroughly unfit for Europeans, and warning of the 'savagery of the population', Holtzendorff viewed transportation to France's '*colonie mortuaire*' as differing from the guillotine only in the long and painful nature of the certain death it promised.[51] Neither personal rehabilitation nor societal advancement, he argued, lay at the heart of this project of colonial exile.

Nonetheless, the hope that colonies could be sites of rehabilitation for exiles persisted. Impressed by the promised transformation of unwanted social segments into a vanguard of imperial penetration, the liberal *Regierungsrat* Friedrich Freund built on Holtzendorff's work to argue that Germany needed to employ a considered, scientific approach to its exile settlements, pushing beyond the Anglo-French models to specifically target victims of impecunious circumstances who had been convicted of crimes against property, so as to offer not merely a form of punishment, but also an avenue for social advancement and personal enrichment in the colonies after their sentence had been served. 'Today, as never before', wrote Freund, 'criminal law must address the healing of social damage. Today as never before, negative repression must be transformed into a positive social factor.'[52]

[49] Holtzendorff, *Die Deportation als Strafmittel*, p. 394.
[50] Holtzendorff, *Die Deportation als Strafmittel*, p. 559.
[51] Holtzendorff, *Die Deportation als Strafmittel*, pp. 520, 561–2.
[52] Freund, 'Ueber Strafkolonisation', pp. 502–37. See too Birthe Kundrus, *Moderne Imperialisten: Das Kaiserreich im Spiegel seiner Kolonien*, Böhlau Verlag, Köln, 2003, p. 106.

Alluding to the example of British Australia, Reuß similarly argued that removing unwanted citizens and forcibly relocating them to penal colonies was imperative for Germany's social regeneration:

> No statistic, has ever demonstrated that the descendants of the convicts deported by England to New South Wales exhibited a higher degree of criminality than the descendants of free settlers. There the antisocial, unhealthy, immoral element had been removed and a strong, blooming nation has emerged. Should that not also be possible for our nation?[53]

The socially progressive dimension to penal settlements was also highlighted by Germany's foremost advocate of penal colonialism, Felix Friedrich Bruck, who wrote a series of works designed to keep penal colonies perpetually on the empire's political agenda. In his 1894 pamphlet *Fort mit den Zuchthäusern!*, and the 1896 follow-up *Neu-Deutschland und seine Pioniere*, Bruck advocated the shift from domestic imprisonment towards penal colonialism as a means of addressing social inequality.[54] Proposing a 'New Germany' in German Southwest Africa, pioneered by a class of criminals whose criminality was simply a product of the lack of opportunity in overcrowded Germany, Bruck made explicit his belief in the intrinsically progressive nature of such colonies:

> The sentence of deportation, if properly established, engenders the improvement, or better put the education of the prisoners because it offers the promise that good conduct during the period of the punishment and transition can place him in a position of economic independence and civic equality. This comforting vision awakens the hitherto dormant moral impulse even in the lowliest of people.[55]

Alluding to the 'enormous technical progress' available to German colonizers, Bruck saw in penal colonies precisely what Bentham had seen in his panopticon, namely the application of rational and economic principles to social engineering and penology. The German government was in a position, he argued, to build a New Germany that 'for centuries to come could offer room for our excess population', if the colony was firmly established by a colonizing vanguard drawn from Germany's impoverished underclasses that had been pushed into criminality.[56] So certain was he of his argument, in 1897 he published a complete draft version of the necessary law to be passed by the *Reichstag*, including a reiteration of his social progressive reasoning that a penal colony could assist in the social mobility of those deemed 'criminals of necessity'.[57]

Bruck had his supporters, most prominently Oscar Priester, who supported Bruck by arguing that not only was German Southwest Africa the most

[53] Reuß, 'Ist die Deportation', p. 619.

[54] Felix F. Bruck, *Fort mit den Zuchthäusern!* Koebner, Breslau, 1894, p. 65; Felix F. Bruck, *Neu-Deutschland und seine Pioniere. Ein Beitrag zur Lösung der sozialen Frage*, Koebner, Breslau, 1896, p. 32. For discussion of this, see Birthe Kundrus, *Moderne Imperialisten*, pp. 104–8.

[55] Bruck, *Neu-Deutschland und seine Pioniere*, p. 32.

[56] Bruck, *Neu-Deutschland und seine Pioniere*, pp. 65–6.

[57] Felix F. Bruck, *Die gesetzliche Einführung der Deportation im Deutschen Reich*, Marcus Verlag, Breslau, 1897, pp. 30–1.

suitable country for such penal colonialism, but that it offered an answer to the German social question which he viewed as being grounded in the problem of overpopulation:

> A goal oriented colonial policy, a wise system of criminal justice in the beneficial direction of deportation to our colonies offers the type of noble goal which is worthy of a culturally elevated state; to transform sullen unpatriotic proletarians who are dissatisfied to the point of revolution into, hard-working, patriotic people who have found contentment through the blessings of work.[58]

Such enthusiastic endorsements notwithstanding, Bruck's campaign to establish a rational system of penal colonialism met with a number of obstacles. A source of minor irritation were those who, while desiring penal colonies, saw them as better placed in territories other than Southwest Africa. Joachim von Pfeil, for example, wrote in favour of New Pomerania in the Bismarck Archipelago rather than Southwest Africa as a location for a penal colony.[59]

A greater impediment, however, was the continued negation of his plans by the *Reichstag*. In January 1898 the secretary of the *Reichstag*'s Budgetary Commission, Franz von Arenberg, once again played a leading role in dismissing the idea, this time joined by the National Liberal deputy Friedrich Hammacher who juxtaposed the past proud history of penal colonialism against contemporary political conditions. Hammacher reminded the *Reichstag* that, despite the seeming positive experience of Australia, Britain no longer sent its citizens to penal colonies as a matter of policy. Wondering aloud whether 'peoples on a higher cultural level should in fact establish penal colonies', he answered his own question in the negative.[60]

Mission societies were similarly sceptical, with Ernst Fabarius continuing to publish his objections to transportation. In an attempt to counter the most often cited positive experience of penal colonialism, he argued that Australia had not profited from its convict past but from the discovery of gold. Russian Sakhalin too should be discounted, he argued, because all that was known of it came through reports from 'Potemkin villages'. Far from rehabilitating French convicts, New Caledonia and Guiana were now overrun with criminal exiles whose corrupting influence had utterly ruined the colonies.[61] Fabarius also argued that instead of assisting the development of colonial society, sending convicts as 'cultural pioneers' was 'a declaration of bankruptcy and of naked egoism by the old world of

[58] Oscar Priester, *Die Deportation, ein modernes Strafmittel*, Franz Vahlen, Berlin, 1899, p. 88. In almost these exact words, Bruck restated the case for deportation in 1901. See Felix Bruck, *Die Gegner der Deportation*, pp. 79–80.

[59] Joachim von Pfeil, 'Ein Beitrag zur Frage der Verbrecherdeportation nach deutschen Kolonien', *Koloniales Jahrbuch* 10, 1897, pp. 18–39. For Bruck's response to Pfeil, see *Die gesetzliche Einführung der Deportation*, pp. 54–5. See too Ernst Schumacher, *Zur Orientierung über die Deportationsfrage*, Emil Pilger, Freienwalde, 1901, p. 20.

[60] Hammacher, *Verhandlungen des Reichstages*, 12 February 1898, p. 990. Hammacher also ruled out New Guinea on the grounds that the treaty agreements with Britain in the Pacific forbade penal colonies.

[61] Fabarius, 'Deportation von Verbrechern', p. 511–14.

culture'. It was, he argued, a 'crime, to inoculate a young, emerging colony with the seed of its ruin'.[62]

Ernst Schumacher also warned against exiling Germans in penal colonies. Schumacher insisted that not only German jurists but also a series of international conferences on jurisprudence between 1872 and 1897 had repeatedly declared penal colonization to be an outmoded form of punishment, notwithstanding its continued popularity with European governments. More important than this scholarly opinion, Schumacher argued, was the consistent lack of support for penal settlements amongst Germany's colonial governors, who pointed to health concerns for prisoners in the tropics. On the racial question Schumacher reverted to Nieberding's analysis of 1898 to argue that 'the authority of the white population would greatly suffer if whites were brought there to serve their sentences'. Furthermore, he opined, deportation had only succeeded in 'thinly populated' regions (by which he meant Australia), meaning that (despite Bruck's claims to the contrary) the demographics of the German colonies expressly ruled out penal colonialism.[63]

Yet many of the voices against penal colonies were not arguing for the status quo. Whilst reiterating Fabarius' negative assessment of overseas exile, Adolf Korn's award winning study of the history of transportation also rejected the reliance upon penitentiaries in a fashion not unlike the advocates of penal colonialism. Indeed, Korn differed from Bruck only in asserting that 'inner deportation' was the answer. Agreeing that one core aspect of convict colonialism had merit—namely physical labour in a remote, underdeveloped territory—Korn suggested that the correct place for this to be undertaken was not in colonial Africa (which had an overabundance of cheap and available indigenous labourers),[64] but in the Prussian east; in particular the 'Masurian moors'. Not only was internal exile less expensive and liable to corruption, but it seemingly avoided the vexed racial question that haunted Southwest Africa.[65] This plan to establish penal colonies within Prussia was not entirely new; it had been mooted in an 1896 anti-deportation article, which itself professed that the idea had been taken from the worker colony movement, as promoted by Friedrich von Bodelschwingh, who had concentrated on reforming the homeless and itinerants.[66] The idea had also been championed

[62] Fabarius, 'Deportation von Verbrechern', p. 557.

[63] Schumacher, *Zur Orientierung über die Deportationsfrage*, p. 21.

[64] Korn argued that the physical labour necessary to create a thriving African outpost of German society could best be carried out not by white convicts but by black indigenous labour, which would benefit from the labour training. Noting both the chance to reorient the work patterns of the indigenous people of Southwest Africa and the economic benefits African labourers could bring Germany, Korn argued that 'in the interests of civilisation it is greatly desirable to get them used to paid and regular employment. Their care would be cheaper and their health far better than German convicts.' This claim infuriated Bruck who claimed that the indigenous people of Southwest Africa had proven to be unfit for the type of labour required for establishing a European colony, arguing that they were 'well below the capacity for work of German workers'. Adolf Korn, *Ist die Deportation unter den heutigen Verhältnissen als Strafmittel praktisch verwendbar?* Guttentag Verlagsbuchhandlung, Berlin, 1898, p. 215; Bruck, *Die Gegner der Deportation*, pp. 95–6.

[65] Korn, *Ist die Deportation unter den heutigen Verhältnissen als Strafmittel praktisch verwendbar?*, pp. 235–7, 243–7. Korn's work won the Holtzendorff Stiftung prize in 1898.

[66] Braune, 'Die Deportation der Gefangenen', p. 15; Friedrich von Bodelschwingh, *Die Arbeiter-Kolonie Wilhelmsdorf*, Bielefeld, 1882.

by Alexander Merensky in the same year, who saw it as a useful way to provide for the digging of canals or the building of railways within Germany.[67]

Despite the notable opposition of the *Reichstag* and jurists like Korn, the discussion surrounding plans to introduce forcible transportation as a means of alleviating Germany of its unwanted population rumbled on into the twentieth century. The *Reichstag* once again revisited the issue in February 1903, when a petition from the chair of the Western Palatinate branch of the German Colonial Society, Casimir Wagner, was presented to the *Reichstag*, asking that it consider the introduction of forced removals. The petition was presented as a synthesis of the contemporary state of colonial penology and pointed to two 'successful' models of deportation, namely Britain's colonization of Australia and the French settlement of New Caledonia. Ingeniously, Wagner had synthesized the rival ideas of Bruck, tha advocate of colonial exile, and Korn, the advocate of 'inner deportation' by arguing that those viewed as political threats, namely 'anarchists and nihilists', could be exiled abroad. So too, many classes of impoverished petty offenders such as vagrants and beggars, which he argued 'have become a national plague', could also be sent to Southwest Africa and learn there to become 'economically self-sufficient', just as Bruck had promised. The more serious criminals, deemed unsuitable for deportation, could instead become part of Korn's preferred model of inner colonization in the Masurian east.[68]

Wagner's petition was referred to the *Reichstag* by the Centre Party's Coelestin Krebs but met with a similar fate to the 1898 attempt to introduce a law allowing for the expulsion of German citizens to the colonies. Immediately upon its arrival in the *Reichstag*, the petition was vehemently attacked by the Social Democrat Friedrich Thiele, who sensed in Wagner's petition an attempt to return to a grander version of the expulsion provisions in the 1878 Socialist Law. Thiele reminded the *Reichstag* that none of the previous grounds for rejecting penal settlements five years earlier had changed. To this he added that 'in France they no longer want to know about deportation. The same is true of England.' To this Krebs replied that the *Reichstag* was not called upon to act on the suggestion, merely to note it.[69] Duly noted, the discussion ended without any further interest being expressed.

Dissatisfied with this outcome, Wagner penned a lengthy book expanding and clarifying his proposal for penal settlements throughout the German colonial empire. In light of the Social Democrats' opposition to his plans, Wagner clarified his position regarding socialists, making it absolutely clear that such plans had nothing to with an attempt to revive a colonial version of the *Sozialistengestz*.[70] Alongside the beggars, Gypsies and vagabonds, whom he designated as 'mealworms',[71] Wagner assured Social Democrats that it was only violent and revolutionary anarchists, not mere supporters of the parliamentary

[67] Merensky, 'Die Deportation als Strafmittel', p. 34.
[68] *Verhandlungen des Reichstages*, 1900/03, 18, Anlage Bd VIII, Nr 823, pp. 5587–9.
[69] *Verhandlungen des Reichstages*, 28 February 1903, pp. 8275–7.
[70] Contra Evans, *Szenen aus der deutschen Unterwelt*, p. 122.
[71] Casimir Wagner, *Die Strafinseln*, Fritz Lehmann Verlag, Stuttgart, 1904, pp. 20–2.

Social Democrats that he wished to send to a penal colony. 'To avoid being misunderstood,' he declared, 'I want to make it absolutely clear, that I mean here only anarchists and not the supporters of social democracy.' If exceptional laws (*Ausnahmegesetze*) were required to deport this revolutionary threat, then he professed to being prepared to concede their use along the model of 1872's Jesuit Law and the Dictator Paragraph employed in Alsace-Lorraine.[72]

Drawing upon long established tropes, transportation was positioned by Wagner in this work as a way of minimizing what he saw as the harmful effects of the traditional penitentiary, replacing incarceration with the redemptive powers of outdoor physical labour in the colonial periphery. Drawing on the comments of former New South Wales Governor Richard Bourke, who had praised penal colonialism as a means of reforming convicts and developing a colony, Wagner asked rhetorically, 'who does not recognise the enormous contrast between the success of the English transportations and the less than meagre results of the current soul destroying, lung afflicting penal system of human menageries that devours millions?'[73] Despite the horror stories circulating about French Cayenne, Wagner vigorously rejected any suggestion that sending convicts to tropical zones constituted of itself state cruelty. Interestingly, he did so by refuting racist notions of intrinsic difference, arguing instead that:

> In my opinion coloureds [*sic*], apart from external appearances differ very little in essence from we Europeans. And one may confidently say: where a coloured finds the requisite conditions for existence and can live truly well, there too may a white exist, presupposing some acclimatisation. The reverse is also true: where a white cannot live, a native can only eke out a truly miserable existence.[74]

Wagner also envisaged that male convicts would marry female convicts, a prospect that horrified the anti-penal colony writer Heinrich Kirsch, who wrote in 1905 that 'it must be admitted that these half or completely syphilitic prostitutes are in most cases of no use for marriage'.[75] Beyond female convicts, however, Wagner also argued that those deported from Germany could also marry indigenous women from the vicinity of the penal colonies, asserting that evidence from a number of European colonies had proven conclusively that the offspring of such mixed marriages were strong and demonstrated a high capacity to become 'decent people'.[76] This is not to say that Wagner was not prone to invoking socio-racial differences when they suited his argument, maintaining elsewhere that indigenous labour was not suitable for the creation of European-style centres for agriculture and industry. If the German colonies were to be developed by cheap labour, this labour, Wagner reasoned, had to be German convict labour which had been freed from the horrors of the metropolitan prison.[77]

[72] Wagner, *Die Strafinseln*, pp. 45–6.
[73] Wagner, *Die Strafinseln*, p. 235.
[74] Wagner, *Die Strafinseln*, pp. 95–6.
[75] Heinrich Kirsch, 'Zur Deportationsfrage', *Blätter für Gefängniskunde*, 39, 1905, pp. 68–9.
[76] Wagner, *Die Strafinseln*, pp. 286–7.
[77] Wagner, *Die Strafinseln*, pp. 305–6.

A similar point was made by Bruck in his final 1906 contribution to the debate, in which he commented that despite their ostensible opposition to the current system of incarceration, those opposing the colonial settlement of exiles were effectively condemning thousands of prisoners to 'decay behind damp grey walls' without hope of rehabilitation.[78] Bruck also reiterated his claim that using convicts to accelerate the processes of colonization was vital for the health of the colony itself; going so far as to argue that the Herero-Nama Wars might not have occurred or would have more easily been won had a vanguard of convict labour been used to ensure that Southwest Africa was more densely populated by Germans.[79] These claims did not go unanswered, with Robert Heindl's *Meine Reise nach der Strafkolonien*,[80] arguing that penal colonies all over the world neither reformed the deported nor developed the colony.[81] Debunking the rhetorically potent example of Australia, Heindl maintained that 'it was not convicts, but gold, and gold alone that made Australia what it is today'. The phase of Australia's penal colonialism, according to Heindl, was one marked by poor planning, draconian punishments, near starvation, and high levels of expenditure from London.[82] The implications of Heindl's work were clear; whether in the Pacific, Asia, South America, Australasia, or Africa, penal colonialism had never succeeded.

Despite having twice been rejected there, the *Reichstag* discussed the question of penal colonialism once again for the last time in February 1908. This time it was at the behest of the ex-governor of German East Africa, prominent member of the Pan-German League and *Reichstag* deputy for the *Reichspartei*, Eduard von Liebert who proffered a resolution for the introduction of a sentencing provision for transportation to a German colony on one of Germany's Pacific Island colonies.[83] Liebert's resolution met with a poor reception. The Centre Party's Adolf Gröber flatly declared that, as in the past, his party could not support the petition.[84] Jonathon Roth of the Economic Union Party confessed that his party was split on the issue,[85] while the Liberal Union Party's deputy Heinrich Dove stated on behalf of his party that they 'utterly rejected' the resolution. In his opinion, the Australian example was one to be avoided, not emulated, declaring that 'the convicts there [in Australia] have only performed one function and that was to massacre the natives to make room for others'.[86]

Undeterred, Liebert discussed his proposal at length on 25 February 1908, in an address to the *Reichstag* that offered his reasoning for such a change to

[78] Felix Friedrich Bruck, *Noch einmal die Deportation und Deutsch-Südwestafrika*, M&H Marcus, Breslau, 1906, p. 11.
[79] Bruck, *Noch einmal die Deportation*, pp. 16–17.
[80] See too Rosenblum, *Beyond the Prison Gates*, pp. 98–101.
[81] Robert Heindl, *Meine Reise nach der Strafkolonien*, Ullstein, Berlin, 1913, pp. 217–22, 444–7.
[82] Heindl, *Meine Reise nach der Strafkolonien*, pp. 298–300.
[83] *Verhandlungen des Reichstages*, 1908, Aktenstuck Nr 612, p. 3638.
[84] Adolf Gröber, *Verhandlungen des Reichstages*, 19 February, 1908, p. 3266.
[85] Jonathon Roth, *Verhandlungen des Reichstages*, 20 February, 1908, p. 3283.
[86] Heinrich Dove, *Verhandlungen des Reichstages*, 20 February, 1908, p. 3287.

the sentencing laws. His proposal for voluntary exile was based on what he argued was the 'generally recognised fact' that current methods of sentencing and imprisonment were inadequate because they did not enable rehabilitation and led to mortality rates approaching 20 per cent in some demographics. Citing supporters ranging from the Deportation League of Hamburg through to Casimir Wagner and Felix Bruck, Liebert posited that some prisoners would prefer life in a penal colony on one of Germany's Pacific Ocean islands than risk their health and their family's security while serving a long prison sentence domestically. The emphasis on the voluntary nature of serving a colonial sentence, he argued, proved that his proposal was not a measure aimed at simply deporting inconvenient Social Democrats, a not unfounded suspicion given that he was the founder and chair of the Imperial League against Social Democracy.[87]

That the colony must be founded in the Pacific islands, Liebert conceded, was a product of the socio-racial hierarchy that prevailed in the African colonies. Rehearsing by now well-worn arguments he declared:

> We must not send these people to our large African colonies. All governors there would speak against it, as we cannot present our criminals, our convicts as examples to the Africans and white skin must preserve its prestige. We must not allow black soldiers to guard white prisoners and in our tropical African colonies we have only black soldiers. There remains therefore only the choice of our South Sea Islands, of which we possess a great number.[88]

Although Liebert insisted he was merely attempting to initiate a long process, the idea was once again repudiated by Rudolf Nieberding, who was still the State Secretary for the Imperial Office for Justice. Although the issue would no doubt be periodically revisited, he argued, he could see no compelling current reason for the resolution to come to a vote at this time.[89]

Liebert's was the final presentation of a plan to deport Germans to the colonies to be introduced into the *Reichstag*. With the coming of World War One and Germany's loss of its colonies, the opportunity for the introduction of colonial exile as a means of ridding Germany of its unwanted citizens came and went without any party in the *Reichstag* supporting it. Despite the support of prominent jurists and a furious scholarly debate spanning several decades, the *Reichstag*'s deputies never saw Germany's colonies as a convenient destination for the empire's unwanted subjects. Nor did the *Reichstag* view the expulsion of Germans to a place that was technically still attached to the *Reich* but was located on the other side of the world as a means by which the strictures of the *Freizügigkeitsgesetz* could be circumvented. Instead of following the lead of Britain, France, and Russia by using the criminal justice system to expel its recalcitrant citizens to the colonial periphery, Germany was forced to rely solely upon its domestic prison system

[87] Eduard von Liebert, *Verhandlungen des Reichstages*, 25 February, 1908, p. 3361.
[88] Eduard von Liebert, *Verhandlungen des Reichstages*, 25 February, 1908, p. 3362.
[89] Rudolf Nieberding, *Verhandlungen des Reichstages*, 25 February, 1908, p. 3364.

to manage its criminal population and to use more inventive legal means to expel those citizens that were seen as a political threat. As the Jesuit Law and the Socialist Law demonstrated, without convict colonies at its disposal the *Reichstag* had to tread very carefully if it was going to legislate to expel particular groups of people while ensuring that their rights as citizens of a *Rechtsstaat* were not unlawfully infringed.

2

The 'Jesuit Menace' of 1872

On 23 August 1872, a large scale riot broke out in working class Essen. This riot was not one demanding socialist reforms or better working conditions. Rather, it was an uprising which sought to ensure that Essen's Jesuits be allowed to remain in the city. The riot occurred after it became known that Essen's Jesuits were about to be expelled from Essen after Prussia's Interior Minister Friedrich zu Eulenburg had pointedly reminded the city's authorities on 10 August 1872 that, according to §1 of the new Jesuit Law, the order was to be dissolved.[1] Although Essen's bishop had responded with a strongly worded letter of protest which argued that the state was meddling in Church affairs, and which contested the law's accusations of 'hostility to the Empire' (*Reichsfeindlichkeit*) and the Jesuit's apparent 'danger to the state' (*Staatsgefährlichkeit*), no exception was to be made. Despite the bishop's letter pointing out that the threat to intern a Jesuit and forbid him from priestly duties was in fact to expel him and rob him of his citizen rights, the measures prescribed by the Jesuit Law of 1872 were to be forcibly implemented in Catholic Essen, as they were throughout Germany.[2]

With letter writing and petitions having failed, Essen's Catholics took to the streets. On the evening of 22 August the faithful marched through the city with torches, balloons, and flags in a show of support for the Jesuits.[3] On the following day, however, matters came to a head when *Landrat* Joseph von Hövel, accompanied by his district secretary, paid a visit to the Jesuit priests in the early evening to inform them of the particulars of their expulsion from Essen. A large crowd gathered outside and when the pair emerged, they had to flee the insults and threats of the crowd. The crowd, now on Frohnhauserstraße, continued to grow but remained relatively well behaved until around 10pm, when the rumour began to circulate that the Jesuits would be expelled immediately if the crowd dispersed. A hunt then began for the *Landrat* and his imagined accomplices. At this point, another rumour surfaced that they were waiting inside the house of a businessman, Herr Nachtigall, on Limbeckerplatz. The crowd surged in this direction, inflicting serious damage on Nachtigall's house. As the police moved

[1] Eulenburg, 10 August 1872 in Landesarchiv Nordrhein-Westfalen, Düsseldorf (LANW), 'Regierung Düsseldorf 2011: Jesuiten oder Orden der Gesellschaft Jesu', unnumbered.

[2] As reported in the *Essener Volks-Zeitung*, 22 August 1872, in LANW Regierung Düsseldorf 2011.

[3] *Essener Volks-Zeitung*, 23 August 1872, in LANW Regierung Düsseldorf 2011.

in, firing blanks to disperse the crowd, the protesters turned on the police with cobblestones.[4]

The riots continued on the following night after another mass demonstration, and despite a heavy police presence it took two hours to restore order.[5] Amidst pleas for calm from Catholic associations, and the public posting by the mayor of announcements reminding Essen's citizens of the penalties for rioting under §116 of the *Strafgesetz-Buch*, two battalions of the Fourteenth Division of the Seventh Army Corps were sent to Essen to suppress this violent expression of Catholic militancy and solidarity with the city's Jesuits. On 27 August, the *Essener Zeitung* reported that 'there is not much difference between the current situation in our city and a state of siege (*Belagerungszustand*)'.[6]

The riots elicited different responses from both Catholics and Protestants, with the bishop of Cologne warning against such violent reactions to the new Jesuit Law, citing the principle of submitting to worldly authority found in Peter's First Epistle.[7] Conjuring up the metaphor of Irish Fenians on the other hand, the Protestant press decried those they called the 'O'Connells of the Rhine', and furiously denied the reports of Catholic papers such as the *Essener Volks-Zeitung* and *Germania* that the rioters were mainly opportunists and Social Democrats trying to stir up revolution.[8] *Germania* argued further that the city's officials had inadvertently provoked the riots by their particularly officious and insensitive manner, that the police's violent response had been excessive, and that innocent bystanders, including Protestants and Jews had also been seriously injured by over-zealous and armed officers.[9] The Catholic *Kölnische Volkszeitung* pointed to the mitigating context of the riots, opining that it was unsurprising that 'the sense of legality and justice of the lower orders had quickly diminished, given that the official and liberal journalism together have endeavoured to systematically destroy it'. Pointing to liberal support for the anti-Jesuit measures, the paper rebuked those who had once been 'as red as the revolution' but who had now become illiberal and reactionary in their persecution of the Jesuits.[10] One thing upon which the

[4] *Essener Volkszeitung, Essener Zeitung*, 24 August 1872 in LANW Regierung Düsseldorf 2011.
[5] *Essener Zeitung*, 25 August 1872 in LANW Regierung Düsseldorf 2011.
[6] *Essener Zeitung*, 25 and 27 August 1872 in LANW Regierung Düsseldorf 2011.
[7] *Kölnische Volkszeitung*, 26 August 1872 in LANW Regierung Düsseldorf 2011: 'Mit bedauern habe ich vernommen, daß die große Liebe und Anhänglichkeit der Gläubigen zu den Vätern der Gesellschaft Jesu bereits Einige zu solchen Kundgebungen des Unwissens und der Entrüstung über die von den Staatsbehörden gegen dieselben ergriffenen Maßregeln hingerissen hat, welche mit den Gesinnungen und Pflichten eines Christen gegen die weltliche Obrigkeit nicht vereinbar, sondern stets zu beklagen sind. Ich ersuch den Hochw. Kleras, überall, wo es nothwendig erscheint, die Gläubigen an ihre Pflichten gegen die weltliche Obrigkeit zu erinnern und sie vor jeder unerlaubten und strafbaren Widersetzlichkeit ernstlich zu warnen unter Bezugnahme auf das apostolische Mahnwort im 1 Briefe Petri 2, 13–15.'
[8] *Essener Zeitung*, 31 August 1872, 3 September 1872 in in LANW Regierung Düsseldorf 2011.
[9] *Germania*, 5 September 1872, 17 September 1872 (2. Beilage).
[10] *Kölnische Volkszeitung* undated, early September 1872, 'wer will sich überhaupt darüber wündern, wenn der Sinn für gesetzlichkeit und das Rechtsgefühl in den unteren Volksschichte rasch abnehmen, da doch die officiöse und liberale Journalistik im Schweiße ihres Angesichts sich abmüht, dasselbe systematisch zu untergraben!'

press agreed, however, was that the riots were an expression of the depth of grass-roots opposition to the *Jesuitengesetz* amongst German Catholics, a law which had led to the expulsion of Jesuits from their communities.

In the case of Essen, this meant the expulsion of two Swiss Jesuits from the empire, and the expulsion of Jesuits who were German citizens from Germany's Catholic regions, in seeming contravention of the Law for the Freedom of Movement (*Freizügigkeitsgesetz)*,[11] which offered all German citizens an inalienable right to freedom of abode:

I. Every citizen has the right inside the federation:

   1) To reside or settle in any region where he is in the position to get his own dwelling or accommodation;
   2) To acquire property of all types in any region;
   3) To conduct business of all types, itinerantly or within the region of residence or settlement, under the legal conditions pertaining to those native to that region.

II. Notwithstanding exceptions provided by existing law, in the exercising of these powers the citizen may not be hindered or limited by vexatious conditions either by the sovereign of his home state or by the sovereign of the state in which he wants to settle.

III. No citizen can be refused the right of settlement, the right to conduct business or the right to acquire property on account of confessional grounds or as a result of a lack of state or regional ties.[12]

The seriousness of the Jesuit Law, its challenge to the right to freedom of residency and movement, and its effects for the newly unified empire were well understood at the time. Prefacing his 1872 edition of the *Reichstag* debates on the banning of the Society of Jesus and the expulsion of Jesuits from Germany, the pro-*Jesuitengesetz* editor and publisher Friedrich Kortkampf made clear the importance that he attached to the issue for the future of the newly unified German Empire. 'For the historian of coming centuries,' he enthused, 'it will be one of the most rewarding and interesting tasks to depict the struggle that has once again flared between the German Empire and the Jesuit-dependent papal seat.'[13] This struggle between the 'German spirit' and 'papal oppression', Kortkampf argued, was not a new one, but

[11] *Germania*, 27 August 1872 (Beilage).

[12] *Bundesgesetzblatt des Norddeutschen Bundes*, 1867, p. 55.

[13] Friedrich Kortkampf. *Für und wider die Jesuiten (III)*, Verlag der Reichs-Gesetze, Berlin, 1872, p. vii. For discussions of German Catholicism and the *Kulturkampf* as a whole, see Rebecca Ayako Bennette, *Fighting for the Soul of Germany: The Catholic Struggle for Inclusion After Unification*, Harvard University Press, Cambridge, 2012; Michael B. Gross. *The War Against Catholicism: Liberalism and the Anti-Catholic Imagination in Nineteenth-Century Germany*, University of Michigan Press, Ann Arbor, 2004, pp. 3–10; Oded Heilbronner, 'From Ghetto to Ghetto: The Place of German Catholic Society in Recent Historiography', *Journal of Modern History* 72(2), 2000, pp. 453–95.

rather one that dated back 1,000 years. The nineteenth-century incarnation of this struggle was, however, to be the decisive one:

> The abolition of the Jesuit Order in Germany forms one of the most meaningful final scenes in the great struggle between hierarchy and the authority of the state. . . . The German spirit steps onto the battlefield in this conflict as the protector of humanity's greater good, and of the freedom of religion and conscience, the truth, the true humanity. As truth is the core of the struggle, the German spirit will be victorious.[14]

As an order, the Jesuits had been perceived for decades by influential liberal Protestant Germans as the vanguard of not merely Catholic religiosity, but also of the Vatican's worldly political aspirations.[15] More perniciously, they were seen as a sect that had been able to control the Holy See in order that the papal seat might thence be used to secure the indirect political control of the several hundred Jesuits residing in the German states through the instrumentalization of the religious loyalty of Catholic Germans.[16] The primary mechanism of Jesuit control, so the argument ran, was the doctrine of papal infallibility, as proclaimed in the fourth chapter of *Pastor Aeternus* and approved by the First Vatican Council on the eve of the Franco-Prussian War in 1870. The principle of papal infallibility confirmed in this document was in fact reserved for *ex cathedra* papal pronouncements in the form of a definition of Church doctrine in the case of theological and christological controversies that threatened the unity of the Church's religious teaching. It was not a radical reassertion of Boniface VIII's demands for temporal political power in the 1302 papal bull *Unam sanctum*.[17] The new Protestant German Empire, however, faced a hostile, recently defeated Catholic France to its west, and the Catholic Austro-Hungarian Empire to its southeast. It also housed sizeable Catholic citizen populations in the Polish east, the Bavarian south, and the Rhineland west. To many liberal nationalists, the notion that Germany's foreign and domestic enemies might find common cause did not seem too far fetched. Should Catholic Germans exhibit primary loyalty to the pope rather than the German state, this would seriously hinder attempts to create a unified nationalist citizenry.[18] These concerns were pithily expressed by Stephan Gätschenberger in March of 1872, when he argued that 'the Fatherland-less' Jesuits had sought to:

[14] Friedrich Kortkampf, *Für und wider die Jesuiten (III)*, p. xi.

[15] Gross. *The War Against Catholicism*, pp. 96–116; Róisín Healy. *The Jesuit Specter in Imperial Germany*, Brill, Boston, 2003, pp. 35ff. See too Manuel Borutta's transnational and Saidian reading of this process in *Antikatholizmus: Deutschland und Italien im Zeitalter der europäischen Kulturkämpfe*, Vandenhoeck & Ruprecht, Göttingen, 2010.

[16] Róisín Healy gives the number of Jesuits in Germany at the onset of the *Jesuitengesetz* as being 634. Within the *Reichstag* debates and press discussions of the issue, the usual vague figure used was 'several hundred'. See Róisín Healy. *The Jesuit Specter in Imperial Germany*, pp. 71–2.

[17] Earlier scholarship reiterated the misconception that, due to his anti-liberal inclinations, Pius IX had sought temporal authority over Europe's Catholics through Vatican I. See for example Llewellyn Woodward. 'The Diplomacy of the Vatican under Popes Pius IX and Leo XIII' *Journal of the British Institute of International Affairs*, 3(3), 1924, pp. 124–5. A more useful overview of the limitations of papal infallibility as asserted at Vatican I is Fergus Kerr's 'Vatican I and the Papacy V: Defining "defining" ', *New Blackfriars*, 60(712), 1979, pp. 356–66.

[18] Gross. *The War Against Catholicism*, pp. 241–91.

> . . . hinder the amalgamation of Alsace with Germany, and to awaken the dangerous enemies of the Protestant Empire in Poland, Old Bavaria, and perhaps also on the Rhine and in Westphalia. Such is the view of the Bavarian Ultramontanes, along with the Czechs and all enemies of the new German Empire, who now channel their agitation against the Empire and progress through the Church.
>
> The Jesuits lunge with fanatical rage against the establishment of German unity, because they recognize that when Germany is strong, the preponderance of Rome and the advance of Jesuitism, the quintessence of Romanism and poison to the German life of the soul, is finished. They had hoped that France would quash Germany which would then be subjected to Roman dogma. German reason and confessional freedom would be murdered, and training in the Jesuit spirit would prevail, thereby bringing the repression they have in Ireland, Poland, Czechia, and South America. However the Jesuits' plan to ruin the Germans morally and spiritually, and to make them the object of the Roman lust for rule, has been foiled. Instead of destroying Germany, France was defeated, and Prussia rose within Germany. Since then the Jesuits have lost their composure.[19]

Such fears where also often expressed in terms of a revulsion at the immoral casuistry and anti-national sentiment ostensibly taught to German Catholic clerics by Jean-Pierre Gury's Jesuit primer *Compendium Theologiæ Moralis*.[20] These complaints were not entirely new to the period of the Jesuit Law—in 1867 the excommunicated Catholic priest and ex-1848 Frankfurt National Assembly deputy Johannes Ronge had published the descriptively titled *Falsification of Christian Morality and the Ethical Pollution of the Young Catholic Clergy and the Catholic People through the Moral Theory of the Jesuit Gury*, while in 1869, the Protestant minister Carl Wilhelm Linß had published his similarly anti-Jesuit tract *The Handbook of Theological Morality by the Jesuit Gury and the Christian Ethic. A Contribution to Understanding the Jesuit Order and the Jesuit Question of the Present Day*.[21] Jesuit morality had also been ferociously attacked by Julius Roth in 1871, when he argued that the Jesuits (described by him as 'the underlying disease of the human race') used their deceptive, casuist reasoning to destroy freedom and impose the rule of the Vatican over all of humanity.[22]

As putatively ruthless exponents of a transnational metanarration of identity which rivalled German nationalism, Jesuits were identified as an existential threat to the project of creating and consolidating the German nation. Supposedly 'cadaverlike' in their obedience to the Vatican and committed above all else to its

[19] Stephan Gätschenberger, *Geschichte des Kampfes der Jesuiten gegen den modernen Staat in Bayern und allen andern Staaten Europa's und die Mittel zur Abwehr*, Verlag der Stahel'schen Buch und Kunsthandlung, Würzburg, 1872, pp. 32, 46.

[20] See for example Christoph Moufang and Eduard Windthorst, *Verhandlungen des Reichstages* 22 Sitzung, 15 May 1872, pp. 372, 389–90.

[21] Johannes Ronge, *Fälschung der christlichen Moral und sittliche Verpestung der jungen katholischen Geistlichkeit und des katholischen Volkes durch die Moraltheorie des Jesuiten Güry*, Selbstverlag des Verfassers, Breslau, 1867; Carl W. Linß. *Das Handbuch der theologischen Moral des Jesuiten Gury und die christliche Ethik. Ein Beitrag zur Kenntniß des Jesuitenordens und des Jesuitismus unserer Tage*, Bindernagel & Schimpff, Friedberg, 1869.

[22] Julius Roth. *Das Jesuitenthum. Eine Zeitfrage*. Otto Wigand Verlag, Leipzig, 1871. For more on the 'moral critique' of the Jesuits, see also Healy, *The Jesuit Specter in Imperial Germany*, pp. 150–8.

ostensible goal of reasserting the pope's global terrestrial rule, Jesuits were viewed as the wellspring of the conflicting loyalties besetting Catholics who were still only fledgling 'Germans'. For many German liberals, this Jesuit threat required eradication as a form of pre-emptive nationalist self defence, as Kortkampf explained:

> The crimes that have been committed by this order for centuries, and which continue to be committed, which fill the bloodiest and most gruesome pages of history, transform it into a sacred duty to eradicate them. Anything else would be self-conscious suicide.[23]

These tensions were of course not monodirectional, and were further heightening by the precarious political position of the Vatican and its pronounced animosity towards the pace and direction of liberal nationalist modernization within Europe. Despite Pius IX's pre-1848 dalliance with liberalism notions, his grievances with the modern world were dramatically crystallized in his 1864 encyclical *Quanta cura*, which was issued in the context of the Vatican's struggle for political power and territory against Garibaldi's forces for Italian unification, protected only by Napoleon III's troops.[24] This defiant pronouncement condemned the idea that 'the Roman Pontiff can and ought to reconcile himself and come to terms with progress, liberalism and modern civilisation' in its appended 'Syllabus of Errors' and, when read in conjunction with the later *Pastor Aeternus* that stemmed from the final moments of Vatican I at the onset of the Franco-Prussian War, it left European liberals (including Catholic liberals) alarmed and astonished. For anti-Catholic commentators such as the excommunicated liberal Catholic theologian (and ex-member of the Frankfurt National Assembly in 1848), Ignanz von Döllinger, Vatican I was nothing more than a Jesuit-orchestrated affair aimed at reinstating the Vatican's temporal authority.[25] In the wake of *Pastor Aeternus*, the earlier *Quanta cura* was similarly viewed as having been retrospectively elevated to the status of an infallible Church doctrine, meaning that German Catholics were seemingly forced to choose between their Catholicism and their German national identity. As one pamphlet put it:

> Through papal infallibility, the modern constitutional state is supposed to fall, und upon its rubble should be rebuilt the mediaeval Papal State. The infallibility question is therefore less a question of belief, and more a question of power, and the power of the Jesuits less a form of religious power than a form of political power.[26]

[23] Kortkampf, *Für und wider die Jesuiten* (III), p. xiv.

[24] Emiliana P. Noether, 'Vatican Council I: Its Political and Religious Setting', *Journal of Modern History*, 40(2), 1968, pp. 218–33.

[25] Ignanz von Döllinger's 1868 newspaper article 'Das Consil und die Civilità' was expanded into the book *Der Papst und das Concil von Janus*, Minerva, Frankfurt, 1968, also published as *Das Papsthum*, Ch Beck'sche Verlagsbuchhandlung, Munich, 1892. In it Döllinger accused the ostensibly Jesuit-controlled pope of attempting to transform the anti-liberal Syllabus of Errors into infallible Church dogma, as a means of effecting 'spiritual-worldly universal rule'. See *Das Papsthum*, pp. 265–82. See also Noether, 'Vatican Council I', pp. 228–9.

[26] Anon, *Das Jesuitengesetz: ein unparteiischer Wort an unsere katholischen Mitbürgern*, Verlag von Eduard Heinrich Mayer, Cologne, 1872, p. 11.

Given German Protestant liberals' anxieties regarding the loyalties of their Catholic neighbours and compatriots, anti-Catholicism remained an endemic feature of German national politics.[27] In 1869, the Protestant Association (*Protestantenverein*), an organization presided over by the eminent jurist Johann Caspar Bluntschli, warned its members that Pius IX's ecumenical council together with his open letter to Protestants from 13 September 1868 inviting them to return to the Catholic Church were attempts to sow the seeds of mutual resentment within the various Christian communities.[28] By April of 1870, this had hardened into a sense of a German-Protestant mission to overcome the notion of papal infallibility, Catholic dogmatism, the 'Roman Council' and 'the Jesuit Order.'[29] In celebrating the defeat of France in April 1871, the *Protestantenverein* warned of the need to also defeat the empire's inner enemies, in particular the Jesuits who had conspired with the pope, 'to pronounce his personal infallibility, and thereby announce his renewed claim to world rule. . . . The Roman Catholic bishops misused the serious period of war in an attempt to force theologians, teachers and priests under the Jesuit fashioned yoke of papal autocracy.'[30]

To consider this danger, the fifth annual conference of the *Protestantenverein* met in Darmstadt on 4 and 5 October, just months prior to the passage of the German Empire's first secularization law, the Pulpit Law (*Kanzelparagraph*), through the *Reichstag* on 10 December 1871. The conference passed a lengthy anti-Jesuit resolution drafted by Bluntschli, which amidst its denunciations of the Jesuits' influence on Germany, called for an anti-Jesuit law. The proposal was supported by the delegates in a manner 'bordering on unanimity':

> The security of the legal order and the authority of the law and the national government, the welfare of civil society, the protection of confessional harmony and the protection of spiritual freedom and intellectual culture require a state ban on the Jesuit order in Germany. It is regarded as a serious duty of German Protestants and the entire German nation to strive with all their strength to preclude the members and associates of the Jesuit order from any role within schools and the Church.[31]

The communiqué that Bluntschli subsequently sent to the various branches of the *Protestantenverein* in the November after the Darmstadt conference struck a note of jubilant stridency:

[27] Gross, *The War Against Catholicism*, pp. 240ff; Jonathon Sperber, *Popular Catholicism in Nineteenth Century Germany*, Princeton University Press, Princeton, 1984, pp. 207ff.

[28] 'Der Ausschuß des Protestanten-Vereins an die Mitglieder desselben', in Deutscher Protestantenverein, *Der Protestantenverein. Seine Statuten, die Ansprachen seines engern und weitern Ausschusses und die Thesen seiner bisherigen Hauptversammlungen in übersichtlicher Zusammenstellung*, Verlag von Emil Barth, Dessau, 1874, pp. 10–14.

[29] 'Ansprache an das deutsche protestantische Volk, von dem Ausschuß des deutschen Protestantenvereins', in *Der Protestantenverein*, pp. 14–18.

[30] Johann Caspar Bluntschli, 'Der engere Ausschuß des deutschen Protestanten-Vereins an die deutsche Protestanten (1871)', in *Der Protestantenverein*, pp. 18–22.

[31] 'Thesen Bluntschli's, betreffend das Dogma von der päpstlichen Unfehlbarkeit und den Jesuitenorden', in *Der Protestantenverein*, pp. 43–5. Also cited in Johannes B. Kißling, *Geschichte des Kulturkampfes im Deutschen Reiche (2. Band: Die Kulturkampfgesetzgebung 1871–1874)*, Herdersche Verlagshandlung, Berlin, 1913, p. 12. Kißling misdates the *Tagung* as occurring in December 1871.

> The dangers posed by the Jesuits to the peace between the confessions, our culture and our freedom, to the state and to the German Empire arise . . . from the organisation and the politics of the order, as an anti-German, anti-state spiritual army. We don't wish to persecute individuals, however we do wish for the cleansing of German soil from this foreign power. . . . Hopefully it will be the final battle against the artificial regeneration of the Middle Ages. The signs of the times are in our favour. The German Kaiser and the German Empire will successfully prosecute this struggle. When the Jesuit Order has once again been buried, then the air will be cleaner and the light brighter in the world.[32]

Another senior member of the *Protestantenverein*, the Rostock theologian Michael Baumgarten, came away from the meeting and composed a long defence of Protestantism as the basis of German national identity. His book argued that Protestantism protected the German state against 'theocracy and hierarchy, as well as against the power of superstition and against socialism and communism, and against the power of disbelief'. His real target, however, was the power of political Catholicism, and he argued with close reference to the British example that Protestantism and the insights to be derived from the Reformation were 'the only possibillity for the liberation of the twenty million German Catholics from their anti-state ultramontanism.'[33]

Bluntschli took a slightly different route to ensure that his views on the necessity of the separation of Church and state and the deleterious effects of the Jesuits were well publicized outside of the Protestant Association, contributing a series of programmatic essays to Paul Lindau's Berlin weekly *Die Gegenwart* throughout the first half of 1872.[34] Beyond *Die Gegenwart*, Bluntschli also published a book entitled *Rome and the Germans* aimed at convincing Germans more generally of the threat posed by Rome and in particular the Jesuits.[35] In it, he depicted a Hegelian confrontation between the 'spirit of Rome' and the 'German spirit'. Whereas the Roman spirit had played its world historical role in spreading Christianity throughout its empire, it had done so in an authoritarian manner; 'the Roman universal rule meant the enslavement of all peoples, the downfall of the nations and their dissolution into Rome.' This, Bluntschli argued, was alien to the German spirit and to the eventual trajectory of the historical *telos* of the *Weltgeist*. As a result, 'the divine guiding hand of world history called upon the Germanic, in particular the German people. Only the Germans could save humanity from Roman despotism.'[36] No mere struggle between the new German Empire and a Vatican

[32] Johann Caspar Bluntschli. *'Die geschäftsführende Ausschuß des deutschen Protestanten-Vereins an die einzelnen Vereine'*, Heidelberg, 23 November 1871, in *Der Protestantenverein*, pp. 22–4.

[33] Michael Baumgarten, *Der Protestantismus als politisches Princip im deutschen Reich*, Lüderitz'sche Verlagsbuchhandlung, Berlin, 1872, p. 4.

[34] Johann Caspar Bluntschli, 'Deutsche Briefe über das Verhältniß von Staat und Kirche', *Die Gegenwart* 2 March 1872, 9 March 1872, 23 March 1872, 20 April 1872. See further J. C. Bluntschli, 'Die große Excommunication und die Pflicht des Staates', *Die Gegenwart* 11 May 1872; 'Die Debatte über die Jesuiten im deutschen Reichstage', *Die Gegenwart* 8 June 1872.

[35] Johann Caspar Bluntschli, *Rom und die Deutschen*, Lüderitz'sche Verlagsbuchhandlung, Berlin, 1872.

[36] Bluntschli, *Rom und die Deutschen*, p. 12.

struggling for relevance in the new liberal era, it was Germany's divinely and historically ordained mission to rescue the world from the malevolent influence of an anachronistic relic from an earlier stage of history:

> The German nation realises that it has been called by God to save the progress of humanity and to definitively free the peoples. Understanding their calling, they shall prove themselves glorious. The spirit of German freedom shall completely overcome the spirit of Roman universal rule.[37]

In this struggle, Bluntschli continued, the Jesuit order had revealed itself to be the key atavistic element committed to the return of the Vatican's universal secular power:

> The German Empire has realised the efforts of the German nationality for independence and the free development of its strengths. The national spirit is hated however by the universalist spirit of the order like the plague. Most hated by the order is the German spirit, which claims its freedom, even from Rome, and which denies the pope's global rule, to which the Jesuits have devoted themselves with all of their strength. The German Empire promises and develops the modern state and the Jesuit order wishes the contrary, the re-establishment of the medieval clerical empire.[38]

Bluntschli's book also offered a firm sense of what measures were necessary to ensure that the atavistic Jesuits could not destroy what he saw as German freedom. Central to his plans was the need for the denial of the Jesuits' corporate rights and eventually their expulsion from the state. Irrespective of their claims to the contrary, he reasoned, 'the Jesuit Order has no national rights and no national right to exist, given that it is the enemy of national freedom and the modern state'.[39] According to Bluntschli, the German government had the legal right to stop the Jesuits from teaching in schools and from conducting church services, as well as to dissolve associations that were illegal or represented a danger to the state. Although individual Jesuits needed to have their personal rights protected, the Jesuit Order itself needed to be expelled:

> The Society of Jesus is an association that is hostile to the law, the state and our culture. It consists of foreigners without a Fatherland, without families, without a homeland, which is waging a spiritual campaign in the service of a Roman commander, and to the outrage of our people works against our state and our laws. Individuals shall have their individual liberty protected, however the order, as an anti-state power, as an organised enemy force, must be knocked on the head and driven from Germany.[40]

Precisely how the rights of individual Jesuits would be protected as the organization was driven out of Germany was not explained by Bluntschli, who ended his book with a plea to halt the 'blood poisoning' effects of the Jesuits:

[37] Bluntschli, *Rom und die Deutschen*, p. 24.
[38] Bluntschli, *Rom und die Deutschen*, pp. 70–1.
[39] Bluntschli, *Rom und die Deutschen*, p. 71.
[40] Bluntschli, *Rom und die Deutschen*, p. 75.

> The German Empire and the Jesuit Order cannot live together in peace, nor can they simultaneously prosper. Either the Empire must cut out the foreign body that is poisoning the blood of the German nation, or a dangerous illness and critical fever will react against this body, which will endanger its welfare if not its life.[41]

More on the basis of the organized agitation that arose from Bluntschli's *Protestantenverein* resolution than from any spontaneous public reaction to his book, a Protestant petition movement was created,[42] which found common cause with the 'Old Catholic' group of Catholics who protested against the principle of papal infallibility.[43] The petitioners lobbied the *Reichstag* for a law that would realize the Protestant Association's desire to outlaw the Jesuit order. In reply, a Catholic counter petition movement was created with the aim of combating anti-Jesuit agitation and supporting Germany's Jesuits. In numerical terms, on the eve of the *Reichstag* debate of May 1872, the Catholic community had clearly demonstrated a superior capacity to harness grassroots supporters for concentrated political purposes than their Protestant counterparts, with 315 petitions supporting the Jesuits recently received by the *Reichstag*'s Petition Commission, with just 38 received condemning them.[44]

The anti-Jesuit petitions showed a willingness for anti-Jesuit legislation to include measures for the expulsion of the Jesuits, particularly in the case of those who were not German citizens. According to one petition from Breslau signed by Professor Julius Räbiger and 4,900 others, because Jesuits had to operate 'unpatriotically, inhumanely, ruthlessly, unscrupulously in accordance with the obligations of their order', and were as such a 'dangerous and pernicious' threat to the common good, a new law was required that 'entirely eliminates the Jesuit order and its affiliated societies together with their effects from German territory'.[45] Another from Altwasser, Silesia insisted that the Jesuit Order, as 'a new enemy of the Fatherland through its state-endangering and anti-German endeavours' required regulation under a new law that 'would bar the Jesuits from the German Empire forever'.[46] From Magdeburg, a petition with 1,274 signatures described

[41] Bluntschli, *Rom und die Deutschen*, pp. 78–9.

[42] The agitational role of the *Protestantenverein* was so evident that the Centre Party deputy Ludwig Windthorst suggested that perhaps it was this association rather than the Jesuits that might more appropriately be labelled '*staatsgefährlich*'. Ludwig Windthorst, *Verhandlungen des Reichstages*, 43 Sitzung, 14 June 1872, p. 1015.

[43] On the cooperation of Bluntischli and the *Protestantenverein* with the Old Catholics, see Claudia Lepp, *Protestantisch-liberaler Aufbruch in die Moderne: Der deutsche Protestantenverein in der Zeit der Reichsgründung und des Kulturkampfes*, Chr Kaiser, Gütersloh, 1996, pp. 336–8; Carolin Metzner, *Johann Caspar Bluntschli. Leben, Zeitgeschehen und Kirchenpolitik, 1808–1881*, Peter Lang, Frankfurt, 2009, pp. 134–5. See also Healy, *The Jesuit Specter*, pp. 55–7. On the Old Catholic movement more generally, see the manuscript of Alexander Stollenwerk's *Liberal gegen Ultramontan: Nachrichten aus der Zeit des Kulturkampfes in Boppard*, in Landeshauptarchiv, Koblemz (LHAK) Abt 700, 129, Nr 75.

[44] *Verhandlungen des Reichstages*, 22 Sitzung, 15 May 1872, pp. 367–70. By June the figures were even more lopsided—181 petitions against the Jesuits, 1964 in support of them. Healy, *The Jesuit Specter*, p. 61, n. 58. Difficulties remain with these raw figures due to the varying number of actual signatories to the petitions.

[45] *Verhandlungen des Reichstages*, Aktenstück Nr 64, 1872, p. 261. Räbiger was a senior member of the Protestantenverein. See *Der Protestantenverein* p. 47.

[46] *Verhandlungen des Reichstages*, Aktenstück Nr 64, 1872, p. 262.

the Jesuits as 'the archenemy of German freedom' and called for a law that 'forbids the residency of Jesuits within the German Empire', while another strongly worded petition from Gleiwitz called for the 'banning of the Jesuit order from the German Empire forever'.[47]

Those submissions petitioning against the introduction of a Jesuit law also recognized that a Jesuit law might well be an exceptional law, in the sense that it would be a law that specifically targeted the Jesuits (and only the Jesuits) for expulsion. From Cologne, 2431 Catholics protested against any such exceptional law (*Ausnahmegesetze*) which they argued must necessarily conflict with the German constitution. Similarly, 2,610 citizens of Aachen warned that any expulsion (*Austreibung*) of Jesuits was not consistent with the constitutional right of religious freedom.[48] From Braunsberg came a petition from the Catholic *Volksverein* that declared their opposition to any type of *Ausnahmegesetze*:

> Such exceptional laws would damage the honour of Germany. States such as England and North America don't have such exceptional laws for Jesuits. Should the existing law of association be modified to penalise a class of people, the consequences can only be that soon other religious and political associations will be restricted through such exceptional laws.[49]

Joseph Schleiser and his co-signatories from Oberroth in Bavaria viewed this as an attempt to 'deprive the Jesuits of their Fatherland.'[50] A printed petition circulated by several high profile Catholics from various regions in Germany and submitted in eleven different versions was pointedly called the 'Petition For the Right of Free Association and Against the Attempts to Expel the Jesuits',[51] while another expressed its dismay at the 'injustice, stupidity, short-sightedness, weakness and prejudiced nature of the petitions seeking the expulsion of the Jesuits'.[52]

Crucially, one Polish language petition pointed out that what was elsewhere in Germany only a theoretical possibility of expelling the Jesuits had in fact already occurred in Posen,[53] as part of Interior Minister Eulenburg's suppression of Polish civic and intellectual leaders in Posen during the immediate post-unification era. Adding a particularly Polish dimension to the pre-history of the expulsion of the Jesuits and to that of the *Kulturkampf* more generally, Eulenburg and Adalbert Falk had already successfully sought permission to repeal the 1854 edict allowing Jesuits to enter Prussia from the King of Prussia on 5 March 1872 due to their suspicions of Jesuit involvement in Polish nationalist political agitation—several months prior to the discussion of the *Jesuitengesetz* in the *Reichstag*.[54] Later, within the context of the *Reichstag* debate itself, the Polish deputies attempted in vain

[47] *Verhandlungen des Reichstages*, Aktenstück Nr 64, 1872, p. 263.
[48] *Verhandlungen des Reichstages*, Aktenstück Nr 64, 1872, p. 264.
[49] *Verhandlungen des Reichstages*, Aktenstück Nr 64, 1872, p. 266.
[50] *Verhandlungen des Reichstages*, Aktenstück Nr 64, 1872, p. 265.
[51] *Verhandlungen des Reichstages*, Aktenstück Nr 64, 1872, pp. 266, 268, 269.
[52] *Verhandlungen des Reichstages*, Aktenstück Nr 64, 1872, p. 268.
[53] *Verhandlungen des Reichstages*, Aktenstück Nr 64, 1872, p. 270.
[54] Healy, *The Jesuit Specter*, p. 63. On the nature of the *Kulturkampf* in Posen, see Zygmunt Zielinski, 'Der Kulturkampf in der Provinz Posen', *Historisches Jahrbuch* 101, 1981, pp. 447–61.

to revive parliamentary interest in the fact that some Jesuits had already been expelled from Posen via a proposal which strongly condemned:

> …the already completed expulsion of Polish members of the Jesuit Order, who are not Prussian citizens, but on the basis of international treaties which guarantee the territorial unity of the ex-Polish territories and the unity of its people, have the complete right to remain in the Prussian part of Poland.[55]

In light of the various submissions, the Commission for Petitions was split into a minority which argued against a Jesuit law and a majority which argued for one.[56] The minority position argued that any Jesuit law would be in the nature of an exceptional law and that the case for such an *Ausnahmegesetz* had not been made by those petitioners agitating for one. Instead, the minority argued, the existing body of law was capable of dealing with any threat, should one arise.[57] For its part, the majority which was in favour of a new law restricting the Jesuits was split between those who wanted a strongly worded prohibition on the Jesuits and those who wanted to avoided the appearance of the creation of a separate body of law for Catholic Germans. The former, stronger position emerged triumphant, with its supporters flatly denying that there was anything exceptional about their proposed submission to the chancellor, arguing that 'it is a misunderstanding to label such a law an *Ausnahmegesetz*'.[58]

This *Reichstag* Commission for Petitions majority cited grassroots agitation for a Jesuit law (organized by the *Protestantenverein*) as a rationale for placing the matter in front of the *Reichstag*, despite the number of petitions (if not signatures) being almost 10:1 against such a law. From here, the matter was debated, to see whether it had sufficient support before being sent to the chancellor and the *Bundesrath* for confirmation or amendment. Once this *Reichstag* debate had been opened with a report from the Petitions Commission secretary Rudolf Gneist on the petitions, the Centre Party's Christoph Moufang lost no time in making clear that what was being debated was the potential expulsion of German citizens. Answering his own rhetorical question with dripping irony, Moufang asked what the radically anti-Jesuit petitioners expected:

> Some want an immediate ban on all activities of these men, penal law as quickly as possible, and expulsion from Germany for all eternity. Very simple, modest and moderate measures as you can see. These are, however, German men which are under discussion here. Most certainly, as German as you. They have German fathers, German mothers, speak German and in fact many have been of more service to the Fatherland than many of us here in the Reichstag.[59]

Moufang went on to refute the charges that the Jesuits were unpatriotic, unscrupulous and a danger to the state, recounting their loyalty to the crown and nation

[55] *Verhandlungen des Reichstages*, 23 Sitzung, 16 May 1872, p. 412.
[56] *Verhandlungen des Reichstages*, Aktenstück Nr 64, 1872, pp. 276–83.
[57] *Verhandlungen des Reichstages*, Aktenstück Nr 64, 1872, pp. 276–7.
[58] *Verhandlungen des Reichstages*, Aktenstück Nr 64, 1872, pp. 281–3.
[59] Christoph Moufang, *Verhandlungen des Reichstages*, 22 Sitzung, 15 May 1872, p. 371.

since 1848, as well as their refusal to become involved in political matters. That the Jesuits were accused of intolerance was a bitter irony, seeing as the real intolerance was to be found in the attempt to pronounce upon the Jesuits 'the punishment of exile'.[60] In legal terms, Moufang continued, the measures stood in opposition to the foundational principle of freedom of conscience, and it was simply unjust to punish Jesuits 'for something hitherto admissible and allowed with a fine, imprisonment or exile!' Dwelling on the possibility of exile, Moufang reminded the *Reichstag* of the outrage caused by the French expulsion of Germans during the recent war,[61] yet it was now seen as appropriate to treat a member of a religious order in the same fashion in Germany.[62] All that German Catholics were asking for, he argued, was not sympathy but a 'true and just equality'.[63]

On the issue of expulsions, the Conservative deputy Hermann Wagener at first vacillated. He argued that the Conservatives were 'not for an expulsion of the Jesuit Order as such', because such a measure would prove 'pointless', given that it would be nigh on impossible to divine precisely who was a Jesuit or a Jesuit's associate. Nonetheless, the Jesuits were a problem which the state could not simply ignore. Even the Catholic states of Austria and France, indeed the Vatican itself, had in the past had occasion to expel the Jesuits. As such, 'those who desired the expulsion of the Jesuits were not requesting something monstrous, but rather merely that which has happened before'.[64] And it did appear, Wagener argued, that there was a conflict between obedience to the laws of the state and the Vatican's call for an unthinking loyalty to the Church that was to be prioritized before duty to the state. Such potential for disloyalty required nipping in the bud ('*principiis obsta!*'):

> I believe that it is impossible for a German government to stand with folded arms before activities that place the fundaments of the state in question, that questions whether Catholic subjects are also bound by the law, or whether Catholic clerics can absolve them from their responsibilities as citizens through a canonical statute. . . . Gentlemen, if they betray and disavow the duties of the citizen under the guise of religion, then they not only deeply damage their own Church, they also make it impossible for the state to assume that position in relation to them which it has always assumed; they make it impossible, gentlemen, to view them as a valid organisation or society, when they act as a state within a state, and one with a foreign commander. We are not at all interested as a state in the pope; we are interested in Prussian and German subjects, and these Prussian and German subjects must obey the laws, and if they won't do it willingly, than they will and must be forced to do so.[65]

[60] Moufang, *Verhandlungen des Reichstages*, pp. 372–3.

[61] On the French expulsions of German citizens during the Franco-Prussian war, see Daniela L. Cagliotti, 'Waging War on Civilians', pp. 161–95. In May and June of 1871, the *Bundesrat*, the Chancellor, and the *Reichstag* had all roundly condemned the 'particularly cruel' French treatment of Germans who had been expelled during the war. See especially the debate on 2 June 1871 in *Verhandlungen des Reichstages*, pp. 984–91.

[62] Moufang, *Verhandlungen des Reichstages*, p. 376.

[63] Moufang, *Verhandlungen des Reichstages*, pp. 376–7.

[64] Herman Wagener, *Verhandlungen des Reichstages*, 22 Sitzung, 15 May 1872, pp. 378–9.

[65] Wagener, *Verhandlungen des Reichstages,* pp. 380–1.

Interestingly, this view was supported by the Catholic and later Chancellor Chlodwig zu Hohenlohe-Schillingsfürst from the Liberal Imperial Party (*Liberale Reichspartei*). With the Syllabus of Errors, he argued, the Vatican 'had declared war on liberalism and modern civilisation', including 'the freedom of the press, freedom of religion, the equality of the faiths and freedom of conscience'. And now the Jesuits, should wonder that their unswerving loyalty to the Vatican makes them suspicious in the eyes of a 'state the existence of which they wish to pull from under it?' To this end, Hohenlohe proposed a law that would be formulated in the following manner:

> The Jesuit Order and orders associated with it are forbidden in Germany. . . . Germans who enter into the Jesuit Order lose thereby their rights of citizenship. . . . No German who has been educated in a Jesuit-run educational institution can be employed in Germany by the state or church.[66]

From the left liberal *Fortschrittspartei*, Eduard Windthorst (nephew of the Centre Party's Ludwig von Windthorst) was also in favour of expulsion. In a long speech that examined in detail numerous Jesuit and Vatican publications and papal proclamations, Windhorst offered a five-fold explanation of the dangers of the Jesuits, namely that they were 'a threat to the state, a threat to the German empire, a threat to culture, that they destroyed confessional peace and that they harmed the morality and education of the nation'.[67] He criticized those who argued for the freedom of the Jesuits, arguing that 'they demand the freedom to oppress others, that is the freedom to oppress the nation, and that is not my idea of freedom'. Recalling the murder of Protestants by Catholics in Paris in 1572, Windthorst ended his speech with a heated call for the expulsion of the Jesuits:

> In Germany, gentlemen, in the land of the Reformation and of free inquiry we will commemorate the 300th anniversary of the St Bartholomew's Day Massacre, and we will commemorate it worthily. We will atone for the crimes committed in the name of humanity through the expulsion of every dangerous, dreadful enemy who threatens to destroy the state, civil society, the empire and morality. Gentlemen, on the 24th August of this year, may no Jesuit defile German soil![68]

The following day, the debate continued with Friedrich Kiefer of the National Liberal Party arguing that the Vatican and the Jesuits had been intent on reviving the secular power of the Church as per the tenets of Boniface VIII's *Unam sanctam* since the Council of Trent in 1545. To his mind it was self-evident that 'the state needed to reach for new methods' to deal with a religious order that knew only 'slavish obedience' to the Vatican. Not only was the removal of the Jesuits from schools necessary, but a thoroughgoing secularization of all arms of the state was required—including the secularization of marriage and the secularization of education. A necessary part of this was the expulsion of the Jesuits:

[66] Chlodwig zu Hohenlohe-Schillingsfürst, *Verhandlungen des Reichstages*, 22 Sitzung, 15 May 1872, pp. 382–4.
[67] Eduard Windthorst, *Verhandlungen des Reichstages*, 22 Sitzung, 15 May 1872, p. 384.
[68] Windthorst, *Verhandlungen des Reichstages*, p. 392.

> Insofar as we do not want the rule, authority and laws of the state to be unclear any longer, the time has come with regard to the role of the Jesuit Order and its associated congregations when one must say that this organism is foreign to our state, it is hostile to our state, it is waging a remorseless war against the foundations and vital interests of the civilisation that we wish to create for the German people through this state, and as such we must revoke their residency and the right to exist in the Empire.[69]

Such sentiments did not go unchallenged and it was not only from the Catholic Centre Party that opposition to the expulsion of the Jesuits was notable, with the particularist democrat Carl Gravenhorst arguing against both the expulsion and the restriction on free association precisely on the grounds that any such moves must necessarily rely on an exceptional law (*Ausnahmegesetz*). The lawyer from Lüneburg spelt out very precisely the political and legal ramifications of the mooted measures:

> Gentlemen, I will vote against the commission's second motion, because it constitutes an exceptional law that compromises personal freedom and restricts the most crucial political rights. . . . Gentlemen, should the Reichstag now begin with a restriction of the right of association, shall we inaugurate the associations' legislation with an exceptional law, with a penal law? I fear that would be a terrible omen for the further functioning of this legislation. . . . One cannot establish unequal laws, one cannot move to police measures, one cannot call upon the state prosecutor and the judges. Gentlemen, in my opinion, this is not the method of our century and does not reflect the principles of a *Rechtsstaat*, as it should rule today.[70]

Similar sentiments were offered by the Centre's Peter Franz Reichensperger, who argued that this was an assault on 'the legal Catholic Church within Germany' through an *Ausnahmegesetz*, which was predicated on the misconception that 'the Catholic Church is incompatible with the modern state'.[71] He questioned too what should become of those German citizens who were Jesuits. All German citizens had settlement rights in Germany, or were otherwise condemned to undesired vagabondage, yet this law sought to deny this to German Jesuits. Reichensperger asked simply what the consequences of this would be:

> What happens when the person in question is no longer allowed to settle? What then? Expulsion abroad! Marvellous. You assume then that foreign states have more humanitarianism and sense of duty than the Fatherland has for its own sons![72]

Reichensperger scorned the idea of a national emergency being declared by political elites who 'had a monopoly on German spiritual culture . . . political power, economic power, the press, all of the resources that afford power' in the face of 211 Jesuits whose only sources of power were their 'prayer books and enthusiasm for the crucified Jesus'. He reminded them that the only people who had shown

[69] Friedrich Kiefer, *Verhandlungen des Reichstages*, 23 Sitzung, 16 May, 1872, pp. 396–8.
[70] Kiefer, *Verhandlungen des Reichstages*, pp. 400–1.
[71] Peter-Franz Reichensperger, *Verhandlungen des Reichstages*, 23 Sitzung, 16 May 1872, p. 403.
[72] Reichensperger, *Verhandlungen des Reichstages*, p. 406.

enthusiasm for the expulsion of Jesuits in the past were the 'great revolutionaries of the century, the encyclopaedists and atheists'. He admitted that if the Communists were in control, then the Jesuits would simply be shot. 'Our moderates,' he observed, 'thankfully don't have strong enough nerves for that. They content themselves with proposals for expulsion.' The idea, he added, that the Jesuits could be working hand in glove with socialist revolutionaries, as some had proposed, was simply ludicrous.[73] While Carl Lucius of the Centre Party attempted to remind the Free Conservatives that they were now breaking an explicit promise in their campaign literature to avoid resorting to *Ausnahmegesetze* in the case of religious controversies and conflicts,[74] Ludwig Friedrich Alexander Fischer of the Liberal Imperial Party rather lamely suggested that every law was in fact an exceptional law, because those who offended the law were always the exception.[75]

At the end of the discussion, the *Reichstag* voted to request that the chancellor create a state of law that would 'secure religious peace, the parity of the confessions and the protection of citizens against the restriction of their rights through spiritual force'. More specifically, they further requested an insertion into the law pertaining to religious associations that would 'make punishable the activities of the Society of Jesus, which were damaging to the state'. A majority of all of the conservative and liberal parties voted for this proposal, including later dissident liberals who would vote against the *Jesuitengesetz* such as Eduard Lasker, Ludwig Bamberger, Edward Banks, Adolf Hagen, August Hausmann, Franz Wigard, and Moritz Wiggers.[76]

When the *Reichstag*'s request to the chancellor and the *Bundesrat* was returned in the shape of a concrete proposal for legislation, it was worded in such a way as to accommodate the frequently expressed desire not merely to outlaw the Jesuit Order, but to expel its members from Germany. Paragraph One of the bill ordered that the Jesuit Order be barred from Germany and no settlements by members of the order be allowed, with pre-existing settlements to be dissolved within six months. Paragraph Two stipulated that foreign Jesuits could be expelled from the empire and, more hazily, that German Jesuits could be denied permission to reside in particular regions or places—a formulation meant to get around the illegality of expelling German citizens from the empire entirely, but which might make it practically impossible for Jesuits to gain approval to reside anywhere in Germany.[77]

[73] Reichensperger, *Verhandlungen des Reichstages*, pp. 407–9. The notion that Jesuits were working with socialist revolutionaries was a persistent one. See for example Gätschenberger, *Geschichte des Kampfes der Jesuiten*, p. 60 and the anonymous *Dr Windthorst und seine socialen Nothelfer, die Jesuiten und der Streik*, Wiemann, Barmen, 1889.

[74] Carl Lucius, *Verhandlungen des Reichstages*, 23 Sitzung, 16 May 1872, pp. 411–12.

[75] Ludwig Friedrich Alexander Fischer, *Verhandlungen des Reichstages*, 23 Sitzung, 16 May 1872, p. 417.

[76] *Verhandlungen des Reichstages*, 23 Sitzung, 16 May 1872, pp. 426–8.

[77] *Verhandlungen des Reichstages*, 45 Sitzung, 17 June 1872, p. 1094. '§1. Der Orden der Gesellschaft Jesu und die ihm verwandten Orden und ordensähnlichen Kongregationen sind vom gebiet des deutschen Reichs ausgeschlossen. Die Errichtung von Niederlassungen derselben ist untersagt. Die zur Zeit bestehenden Niederlassungen sind binnen einer vom Bundesrath zu bestimmenden Frist, welche sechs Monate nicht übersteigen darf, aufzulösen. §2. Die Angehörigen des

In a candid introduction to the new legislation, Prussia's representative to the *Bundesrath* and the President of its Justice Committee, Heinrich Friedberg recommended that the *Reichstag* note the unusual restrictions on individual liberties being placed on German citizens when it deliberated the proposal. Sidestepping the term *Ausnahmegesetz*, Friedberg described the bill as an emergency law—a '*Nothgesetz*', made necessary by the magnitude of the current threat:

> The German governments act from the following consideration with their bill: the activities of the Jesuit Order through its individual members contain a danger for the empire and disrupt the peace of the empire. As such, measures must be sought to make this disturbance of the peace impossible though the means of domiciliary law. They further believe that this might be possible if in relation to the members of the Jesuit Order a restriction of the right available to all other German citizens to move freely and do as they please in the German Empire is enacted. . . . It is not a misjudgement to say that in this restriction of a right available to all other German citizens an authorisation for a considerable interference in the freedom of the individual is being requested; however from the moment it is recognised that the unrestricted activities of the order and its members represents a danger to the peace of the empire, one is only exercising the right of self-defence, when one turns to the measure of expulsion.[78]

The Centre seized upon this admission that the rights of individual German citizens would be infringed upon, with their leader Hermann von Mallinckrodt arguing that this was not a legal decision, but rather an expression of party power, whereby 'the guiltless would be condemned without trial or rights' in a fashion that was 'hitherto not customary in German lands'.[79] Such lawmaking represented 'deformed law', the 'declaration of the bankruptcy of the legislature', and a form of 'proscription'. The consequences of the proposal were to deny the members of the order their citizenship rights, to deny them their country and to cast them out into foreign lands. Such a measure was, he continued, unconstitutional and represented the 'demise of freedom'. Mallinckrodt further argued that by turning to the *Bundesrat* to draft legislation for the expulsion of German citizens through an exceptional law, the *Reichstag* had embraced the principle of 'dictatorship', which might have been expected from Bismarck, but which was surprising coming from liberal deputies.[80] To this, the Conservative Hermann Wagener replied that an *Ausnahmegesetz* was an appropriate response to the current state of exception (*Ausnahmezustand*), or as he most dramatically designated it, state of war (*Kriegszustand*). A Jesuit law was necessary, given that the situation was one of absolute urgency, of a 'burning and present danger to the empire'.[81]

Ordens der Gesellschaft Jesu oder der ihm verwandten Orden oder ordensähnlichen Kongregationen können, wenn sie Ausländer sind, aus dem Bundesgebiet ausgewiesen werden; wenn sie Inlander sind, kann ihnen der Aufenthalt in bestimmten Bezirken oder Orten versagt oder angewiesen werden.'

[78] Heinrich von Friedberg, *Verhandlungen des Reichstages*, 43 Sitzung, 14 June 1872, p. 1001.
[79] Hermann von Mallinckrodt, *Verhandlungen des Reichstages*, 43 Sitzung, 14 June 1872, p. 1002.
[80] Mallinckrodt, *Verhandlungen des Reichstages*, pp. 1005–7.
[81] Hermann Wagener, *Verhandlungen des Reichstages*, 43 Sitzung, 14 June 1872, pp. 1009–10.

Others went even further, for the left liberal Hermann Schulze-Delitzsch, the Jesuit threat was so extreme, that the expulsion proposal was simply too moderate, too weak. The Jesuit question was an 'existential question' (*Existenzfrage*), and what the *Bundesrath* was proposing was simply inadequate to deal with it.[82]

The Centre Party's Ludwig Windthorst, despite his private misgivings about the Jesuits and their support for Pius IX's policy adventurism,[83] gave a blistering denunciation of the *Reichstag* proposal, particularly of the bill's expulsion provisions:

> Is it a sign of civilisation when one wants to eliminate a group of fellow citizens from the nation because they, on the grounds of their established rights, I repeat, on the grounds of their established rights, have united so as to pray together, to study together and to work together?... Gentlemen, it is claimed of the Germans that they more than any other nation abide by the law. Is it then lawful that you expel an entire class of fellow citizens without an *in facto et jure* concrete accusation, without an investigation, without trial, without defence, and even without a court, without a tribunal? That is the use of force, and it does not stop being a measure of force, because you believe you can cloak it with the mantle of law.... Gentlemen! If Germany is a civilised state, if we are a rational people, if we are a lawful people, then I would claim that the measures suggested here are anti-German and anti-national. They have not grown from German soil, but rather have been borrowed from the actions of the Paris Commune.[84]

There were difficulties too with the practicalities of expulsion. Where were the Jesuits to go? No other country was legally obliged to take German citizens, particularly those deemed a dire threat to their country. Unlike France, Britain, or Russia, Germany had no penal colonies to which expelled citizens could be sent. Condemning the proposal of some in the *Reichstag* to simply banish German Jesuits from the state forever, which he viewed as a 'legislative monstrosity the likes of which I have not seen in the 61 years of my life', Windthorst reminded the *Reichstag* of their responsibility to their own citizens:

> It is necessary that if one wants to expel someone, they must know to where. No foreign state is obliged to accept any German citizen. If we wish to begin expulsions and deportations, then it will be necessary in our further negotiations with France to have them perhaps cede to us a deportation colony, perhaps Cayenne and Lambessa, instead of some part of their billions. Then we might speak of the practical implementation of a deportation.[85]

For Windthorst this law was not indicative of the *Rechtsstaat* that the *Reichstag* was supposedly attempting to construct; in fact it was the opposite. Other constitutional states such as Britain and the United States, he concluded, 'would be

[82] Hermann Schulze-Delitzsch. *Verhandlungen des Reichstages*, 43 Sitzung, 14 June 1872, pp. 1011–12.
[83] Margaret Lavinia Anderson, *Windthorst: A Political Biography*, Clarendon Press, Oxford, 1981, pp. 121ff.
[84] Ludwig Windthorst, *Verhandlungen des Reichstages*, 43 Sitzung, 14 June 1872, pp. 1015–16.
[85] Windthorst, *Verhandlungen des Reichstages*, p. 1017.

amazed to hear, that it is possible to propose such a thing in the nineteenth century in a German parliament',[86] a sentiment endorsed by his party colleague Franz Rudolf Probst, who argued that it was improper to impose an exceptional law, to declare the Jesuits without rights and cease to recognize them as German simply on the basis of prejudice.[87]

On Monday, 17 June 1872, several attempts were made by National Liberals to deflect the criticism that the measures under consideration conflicted with the party's hitherto commitment to constitutional rule. Friedrich Meyer, whilst reiterating that the empire found itself in a state of emergency (*Nothstand*) as a result of the Jesuits' activities, presented a plan whereby the constitutional rights of individuals might be strained without technically being broken, in an attempt to deflect the accusation that the *Reichstag* was considering the creation of an exceptional law. He offered a plan for differentiated expulsions with foreign Jesuits to be simply expelled but German Jesuits, whose position in law was trickier due to their citizenship rights, being excluded from all but a small part of Germany. He rejected the idea that German Jesuits could be stripped of citizenship and thereupon expelled alongside foreign Jesuits as not consistent with the foundations of modern law. Instead, he suggested a form of internal exile or internment within a particular region of the empire where they apparently ceased to be dangerous.[88] Meyer's National Liberal colleagues Friedrich Dernburg and Rudolf Gneist also answered the charge of liberal inconsistency. Dernburg did so by arguing that liberal rights could only be extended to those that recognized the legitimacy of the state; that is to loyal political opponents, and not to those who would destroy the liberal *Rechtsstaat* itself. For those who were opposed to the liberal state, the applicable principles were not those of liberal tolerance, but of battle.[89] For Gneist, the situation was the same; 'such laws are not *Ausnahmegesetze*. They only appear so when respect for the laws of the state is viewed as an exception.' In the case of the Jesuits, Gneist argued, they used appeals to freedom and law only to overthrow both and to 'insinuate the rule of the Jesuits in Germany'.[90]

Meyer's internment option (alongside other plans to expel Jesuits) was ridiculed by the Bavarian left liberal Joseph Gerstner as an unconstitutional 'domestic Cayenne' option. Gerstner was no supporter of the Jesuits, but insisted that they be attacked through reason, education, and 'the German spirit' rather than 'vexatious police measures.[91] To his left, the Social Democrat August Bebel agreed that change would come through education and enlightenment, not police measures. Bebel expressed his disgust with both the unyielding unltramontanism of the Catholics and liberal Protestantism's comfortable 'religion in pyjamas and slippers' which he viewed as being equally detrimental to the political development of the

[86] Windthorst, *Verhandlungen des Reichstages*, p. 1018.
[87] Franz Rudolf Probst, *Verhandlungen des Reichstages*, 43 Sitzung, 14 June 1872, pp. 1023–6.
[88] Friedrich Meyer, *Verhandlungen des Reichstages*, 45 Sitzung, 17 June 1872, pp. 1060–1.
[89] Friedrich Dernburg, *Verhandlungen des Reichstages*, 45 Sitzung, 17 June 1872, p. 1065.
[90] Rudolf Gneist, *Verhandlungen des Reichstages*, 45 Sitzung, 17 June 1872, p. 1092.
[91] Joseph Gerstner. *Verhandlungen des Reichstages*, 45 Sitzung, 17 June 1872, pp. 1069–73.

German people. For him, the Jesuit question was a 'phony debate' (*Scheindebatte*), given that the various German state governments already possessed the power to expel undesirables, as the experience of numerous individual socialists had shown. It was, in his opinion merely an attempt by the liberals to realign public support behind them in the face of a disillusioned electorate.[92]

While Bebel sought to recast the terms of the debate in terms of the attempt to maintain the parliamentary hegemony of the Protestant bourgeoisie, the Polish Party persisted in its attempt to foreground the Polish dimension of the Jesuit expulsions, having failed to do so twice already. Władysław Niegolewski reminded the *Reichstag* that the theoretical debate about whether and how Jesuits could be legally expelled was entirely moot, given that it had already been carried out in Posen. The law under debate would enable this process to be accelerated so as to specifically target Polish Catholic communities, leaving them at the mercy of the police. This measure, as an *Ausnahmengesetz*, was:

> …a misuse of neoliberalism, a violation of the trust of the people who expect that the principles of freedom are applied equally everywhere and are not perforated by exceptional laws. Once you have moved down the path of exceptional laws, then the people and freedom will be crushed by them!

How could the same *Reichstag* deputies, Niegolewski continued, who professed to be so concerned about the plight of persecuted Romanian Jews be blind to the suffering of their own Catholics? As for the claim made by Eduard Windthorst that the Jesuits had been responsible for the ruination of Poland, Niegolewski reminded the *Reichstag* that it was not the Jesuits who had partitioned Poland.[93]

Not all liberals shied away from the connotations of the term exceptional law, with Wilhelm Löwe of the left liberals professing his 'readiness today to lay an *Ausnahmegesetz*—I will concede the term—in the hands of the government'.[94] For the most part, however, the term remained a tool with which the Centre Party sought to discredit it, as Franz Ballestrem tried to do. Pointing out that foreigners could already be expelled without new laws, Ballestrem condemned the attempt to introduce a 'colossal *Ausnahmegesetz*' that left Jesuits 'bereft of rights'. He found it incredible that this expulsion measure could have been dreamed up by the *Bundesrat*'s Justice Committee and warned that Germany could no longer expect that other neighbouring Catholic nations would feel any compunction about expelling Germans, should they feel so moved, in retaliation against this attack on Catholicism. The Jesuits, he concluded, will continue to spread civilization and religion wherever they might be sent. His concern, however, was for Germany which 'leaves behind the path of law and had descended to the depths of forcible measures'.[95]

[92] August Bebel, *Verhandlungen des Reichstages*, 45 Sitzung, 17 June 1872, pp. 1079–82.
[93] Wladyslaw Niegolewski, *Verhandlungen des Reichstages*, 45 Sitzung, 17 June 1872, pp. 1076–77.
[94] Wilhelm Löwe, *Verhandlungen des Reichstages*, 45 Sitzung, 17 June 1872, p. 1083.
[95] Franz Ballestrem, *Verhandlungen des Reichstages*, 45 Sitzung, 17 June 1872, pp. 1087–9.

Irrespective of such critique, the bill was passed with 183 for the bill and 101 opposed, with the majority comprising of Conservatives, Free Conservatives, National Liberals, and around half of the Progressive Liberals.[96] The Progressive Liberals and the Social Democrat August Bebel voted against the bill due to their conviction that it was an unjust *Ausnahmegesetz* rather than because of any affection for the Jesuits. Polish Party representatives voted against the measures because it affected them in two ways—as Catholics, which saw them aligned with the Centre Party in their opposition to any attack on representatives of the Church, and as a minority in their own right, which saw them share the same misgivings about exceptional laws aimed at minorities that conceivably motivated other dissenters such as Eduard Lasker and Ludwig Bamberger,[97] the Hannoverians Heinrich Ewald, Carl Gravenhorst, Otto Grote, Ernst Ludwig Lenthe, and Carl Ferdinand Nieper, as well as the Danish Party deputy Hans Andersen Krüger. Notably, Krüger attempted to stop the law from being implemented by disputing the *Bundesrat*'s constitutional powers. Arguing that expulsion was precisely the way in which the German Empire had always dealt with its minorities, he presciently warned of the fate that might well befall other minorities such as the Danes, now that exceptional legislation had been passed to control the Jesuits:

> For us, expulsions have been part of the agenda since the Law of Incorporation. It has all too often come to pass, that children, boys and youths who come to visit their parents during the holidays in their Northern Schleswig birthplace have been immediately expelled. . . . Yes, we know exactly what an expulsion, a sudden arrest, an unexpected police intervention, a police enforced punishment means . . . it appears to me that the moment has arrived when the state of exception (*Ausnahmezustand*) in North Schleswig has spread across the entire German Empire, and that is no accident, for once the law and the constitution have been overlooked in one area of the Empire, it is impossible for the rest of the Empire to preserve them. Either the law everywhere or lawlessness everywhere. . . . When the voice of the law speaks into your ears to no avail, then you are forced to lurch from exceptional law to exceptional law. Who knows, gentlemen, which section of the population of Germany will be expelled from Germany by an *Ausnahmegesetz*?[98]

It is on this point that Lasker somewhat belatedly argued that religious minorities should not be subject to exceptional legislation that restricted their rights in a manner reserved solely for them. The role of the state, he argued, was not to persecute its citizens but rather establish a legal framework within which they could not be persecuted. The only thing to be achieved through the restrictions

[96] The figures for the subsequent vote on the legislation on 19 June were 181 for and 93 against. *Verhandlungen des Reichstages*, 45 Sitzung, 17 June 1872, p. 1150. See also Gross, *The War Against Catholicism*, pp. 258–75; Healy, *The Jesuit Specter*, pp. 67–9.

[97] On Lasker and Bamberger's principled opposition to the ultimate form of the Jesuit Law, see Gross, *The War Against Catholicism*, pp. 258–72. Gross' argument that as Jewish Germans they were reluctant to vilify a minority is mildly complicated by the fact that the Prussian *Bundesrath* representative that recommended the eventual stronger version of the *Jesuitengesetz* to the *Reichstag* was Heinrich von Friedberg, the converted Jewish jurist. See Heinrich von Friedberg, *Verhandlungen des Reichstages*, 43 Sitzung, 14 June 1872, p. 1001.

[98] Hans Andersen Krüger, *Verhandlungen des Reichstages*, 45 Sitzung, 17 June 1872, pp. 1095–6.

on the Jesuits would be confessional strife and bitterness.[99] This was denied by the National Liberal Richard Wilhelm Dove, who refused to accept the charge that the measures amounted to the persecution of German citizens. Instead, he argued, the law was aimed at halting the Jesuits from bringing about the spiritual universal monarchy of Rome, and the subsequent subordination of the German Empire to this universal monarchy.[100] In disgust, the Centre Party's August Reichensperger declared Dove's position in favour of the *Ausnahmegesetz* to be the 'declaration of bankruptcy by modern liberalism', explicitly including in his definition of liberals, 'those conservatives no longer worthy of the name who voted with the Left'.[101] As far as he was concerned, he had wasted half of his life supporting democratic institutions which had now shown themselves to be simply incapable of surviving in a *Reichstag* that was moving steadily towards a police state.[102] One disgusted Catholic aristocrat, Franz Egon von Hoensbroech, even invited expelled foreign Jesuits to live on his estate just on the other side of the Dutch border with Germany, an offer which greatly upset Interior Minister Eulenburg.[103]

Alongside the Jesuit Law, another law offered an avenue for the expulsion of Catholic clerics, namely the 1874 Expatriation Law, which specified that clergy found guilty of a criminal offence could be stripped of their citizenship and expelled from Germany. This was one of the few laws in the world that officially enshrined the involuntary stripping of citizenship rights as a legal sanction.[104] Under the terms of the law, any priest or member of a religious order who was relieved of their office by the state could be expelled from particular regions within the empire. Furthermore, should the clergy member in question not comply, he was liable to lose his citizenship and be expelled from the empire entirely:

> §1 A priest or other cleric, who has been dismissed from his post by a court judgement and by their conduct implies a continued claim on the post that has been taken from them can have their rights of residency revoked or modified for particular regions or places by the state police authorities. Should the actions of the same exhibit pretensions to continued office, or consist of the actual continued exercising of it, or if he should act against the decree of the state police authorities, he can have his citizenship declared void by a decree of the central authorities of his state of origin and be expelled from the territory of the empire.[105]

[99] Eduard Lasker, *Verhandlungen des Reichstages*, 48 Sitzung, 19 June 1872, pp. 1123–6. The National Liberal Otto Bähr echoed Lasker's reasoning in his written rationale for voting against the Jesuit Law. Otto Bähr, *Verhandlungen des Reichstages*, 48 Sitzung, 19 June 1872, p. 1156.

[100] Richard Wilhelm Dove, *Verhandlungen des Reichstages*, 48 Sitzung, 19 June 1872, pp. 1126–9.

[101] August Reichensperger, *Verhandlungen des Reichstages*, 48 Sitzung, 19 June 1872, p. 1131.

[102] Reichensperger, *Verhandlungen des Reichstages*, p. 1138. The National Liberal Rudolf Gneist denied the charge of the creation of a liberal police state, *Verhandlungen des Reichstages*, 48 Sitzung, 19 June 1872, p. 1144.

[103] LANW Regierung Düsseldorf 1252, p. 161.

[104] Lawrence Preuss, 'International Law and the Deprivation of Nationality', *Georgetown Law Journal* 23, 1934/35, p. 257.

[105] 'Gesetz, betreffend die Verhinderung der unbefugten Ausübung von Kirchenämtern. 4. Mai 1874', *Reichsgesetzblatt* 14, 1874, pp. 43–4. See too Johannes B Kißling, *Geschichte des Kulturkampfes im Deutschen Reiche*, Vol II, pp. 475–7.

No mere dead letter, frequent use was made of the first part of the new provisions that allowed for the expulsion of clergy from particular regions, if not the second enabling the stripping of citizenship and expulsion from the empire, the application of which was the subject of some confusion.[106] Between 17 June 1874 and 19 February 1875, for example, thirty-two clerics were expelled from the regional government district of Trier[107]—none of whom lost their citizenship. Many were also removed from the districts of Düsseldorf, Koblenz, and Aachen.[108]

The question of whether or not anti-Jesuit measures, and in particular the expulsion clauses, amounted to an *Ausnahmegesetz*, remained the most controversial part of the measures. Immediately after the 1872 law, its constitutionality was defended in a pamphlet which argued that the Jesuits were not a religious organization, but rather a foreign political movement. No foreign association that placed the political order in question and actively opposed the laws of the state could be tolerated, it argued, if the state wanted to survive. Through the declaration of papal infallibility and the desire to reinvigorate the papal state of the Middle Ages, the Jesuit question represented 'less a question of faith and more a question of power', their activities 'less religious than political endeavours'.[109]

August Sträter's pro-Jesuit first person account and collection of sources from the 1872–73 expulsions on the other hand contested this and focused on the political harmlessness of the Jesuits and on their embeddedness in their parishes and communities.[110] Sträter also made it very clear precisely how the measures affected individual communities and Jesuits, evoking scenes of emotional parting as both foreign and German Jesuits were expelled from Paderborn, Münster, Aachen, Mainz, Koblenz, Essen, Cologne, Bonn, and other Catholic cities. The distinction between domestic and foreign Jesuits, seemingly clear in the legislation appeared to be less clear in the application of the law, according to Sträter. In Maria-Laach, the Jesuits protested against a law that they argued 'forced German citizens to leave the soil of their homeland'.[111] Certainly no real distinction between the two appeared to have been made when on 2 November 1872 the *Westfälisches Volksblatt* decried the actions of the *Reichstag* in expelling German citizens on the occasion of the expulsions being carried out in Paderborn, with the paper declaring that 'those that are now being hunted as criminals from city to city, from country to country are children of our country, our brothers, our relatives, our friends; in short it affects the best and the most virtuous of our people'.[112] So too, the speech reported in the *Westfälischer Merkur* on 19 October 1872 lamented the expulsion of the Jesuits from Münster, given that they had been 'glittering examples of self-sacrificing patriotism', serving as medical personnel on the battlefield

[106] LHA Koblenz, Abt 403 Nr 7558, pp. 139–40, 151–7.
[107] LHA Koblenz, Abt 442 Nr 10419, pp. 195–6. See also Abt 403, Nr 15722, pp. 26–7.
[108] See LHA Koblenz, Abt 403 Nr 7558, Abt 403 Nr 1722, pp. 113, 133–5, 213–14.
[109] Anon, *Das Jesuitengesetz*.
[110] August Sträter, *Die Vertreibung der Jesuiten aus Deutschland im Jahre 1872*, Herder'sche Verlagshandlung, Freiburg, 1914.
[111] Sträter, *Die Vertreibung der Jesuiten aus Deutschland*, p. 43.
[112] Sträter, *Die Vertreibung der Jesuiten aus Deutschland*, p. 11.

in the recent war against France. 'Despite this,' the paper continued, 'as unbelievable as it sounds, they are now judged by a law to be the equivalent of criminals and condemned to leave German soil as if they were enemies of the state and traitors to the Fatherland!' The Father Superior of Münster's Jesuits, Hergarten, echoed these sentiments in his letter of protest to the government on 14 October.

> Rebuked as criminals, expelled from our houses, exposed without protection or rights to all possible force, our citizenly honour deeply insulted, our life's calling brutally torn from us, robbed of our means of subsistence, we lay our full trust for the future in the hands of He to whom the oppressed innocent have never prayed in vain.[113]

The fate of German Jesuits in the city of Cologne did, however, show some understanding of the legal difference between citizen and resident aliens, albeit a begrudging one. When Arnold Schitz, a priest and Cologne local, protested that the laws surely did not mean for him to be removed from his own relatives in the city, the local police commissioner's reply made both his preference and expectations clear: 'In the case that you intend to remain within the territory of the German Empire, you must explain in writing to this office where you will take up residence.' So too Father Superior Bernhard Rive of Cologne, was informed that even as a Prussian subject, he was not allowed to reside in 'any part of the Rhine province and further in the provinces of Wetphalia, Prussia, Silesia, Posen, Hanover, or Schleswig-Holstein as well as the cities of Berlin, Potsdam and their surrounds'.[114] In Mainz resident Jesuits left for America, Chile, and the East Indies, whilst German Jesuits were ordered to live in 'purely Protestant regions' where they were forbidden to work as priests, or alternatively 'to leave their homeland entirely'.[115] From Aachen, the priests Heinrich Boehmer left for North America after being expelled, whilst Engelbert von Osbach left for nearby Belgium. The priest Albert Voigt was said to have simply 'made his way abroad'.[116]

In fact, the way in which the law was administered by the bureaucracy illustrates precisely how German Jesuits were treated. The directions to provincial governments and *Landräte* issued by Interior Minister Eulenburg and *Kultus* Minister Falk on 9 September 1872 show exactly how restrictive the interpretation was for German Jesuits within Prussia:

> If the residency of a German member of the Order of the Society of Jesus in a local district or a part thereof has been forbidden, the member of the order is to be directed, should he actually intend to remain in the territory of the German Empire, to declare within a nominated period in which place he will reside in the future. If the member of the order complies with this stipulation in a timely fashion, and if the newly chosen place of residence lies within the territory of the kingdom [of Prussia], then the government of the kingdom are to establish whether residency in

[113] Sträter, *Die Vertreibung der Jesuiten aus Deutschland*, pp. 19–22.
[114] Sträter, *Die Vertreibung der Jesuiten aus Deutschland*, pp. 27–30. This was also the experience of Father Superior Minoux of Koblenz, *Die Vertreibung der Jesuiten aus Deutschland*, p. 49.
[115] Sträter, *Die Vertreibung der Jesuiten aus Deutschland*, pp. 58–9.
[116] LANW Regierung Aachen 10699, pp. 55–7, 114.

> this place is permitted or not. If the chosen destination lies within the jurisdiction of the police officials of another state, those officials must be consulted as quickly as possible whether they have cause to forbid the residency of the member of the order. If this government or the police officials of another state chosen for residence expresses no objections to the resettlement of the member of the order, then it is to be approved and we are to be given notice of this. If however, the location chosen by the member of the order is one which in the view of the relevant authorities similarly cannot be permitted, then their explanation of the prevailing local and personal relations is to be forwarded to us and our decision regarding a *directive* for a particular place of residency is to be sought. The same procedure is to be followed in the case that the member of the order does not designate a new place of residency within the stated period of time, or when he declares himself incapable of doing so.[117]

That the Jesuit Law was an exceptional law appeared clear to its objects, with Father Superior Urban Drecker of Bonn declaring in a letter to local authorities on 3 October 1872 'I protest against a measure, that without evidence of personal guilt, without investigation and without a judge's decision, without the possibility of legal defence, forces us from our house, and leaves us without sustenance and shelter.'[118] In Regensburg too, several protests were lodged by priests demanding the protection of their constitutionally guaranteed domicile rights. Already an *Ausnahmegesetz*, one priest argued, it appeared that this exceptional law would also be applied in an exceptional manner. Instead of following the usual legal credo which advised enforcing harsh laws leniently (*odiosa sunt restringenda*), the application of this particular law appeared to reflect its harshest possible interpretation.[119] As the events of August 1872 made clear, the sense of injustice in Essen was such as to lead to strikes and riots involving up to 20,000 people.[120]

Even as the *Kulturkampf* lost its intensity, ill will regarding the still current Jesuit Law persisted. Almost a decade after the law had been passed, Heinrich Meurer condemned both the *Reichstag* and the Bluntschli-led *Protestantenverein* for not merely the denunciation of the Jesuits but also their expulsion, which he described as 'unchristian, immoral, unpatriotic, ignoble' actions 'in contradiction of all rights'. The object of this persecution, Meurer argued, was ultimately 'the destruction [*Vernichtung*] of the Catholic Church'.[121] In Meurer's estimation, compared to those who had proven that they really were 'dangerous to the state' in that they had 'resorted to extreme measures [*Gewaltmaßregeln*] unnecessarily', the Jesuits had proven through their socially beneficial activities to be the 'true patriots'.[122]

[117] Eulenburg and Falk to Landräte, 9 September 1872 in LANW Regierung Düsseldorf 2011, and LANW Regierung Aachen 10699, p. 38.

[118] Sträter, *Die Vertreibung der Jesuiten aus Deutschland*, p. 38.

[119] Sträter, *Die Vertreibung der Jesuiten aus Deutschland*, pp. 72, 77–8.

[120] Markus Schäfer, *Staatliches Vorgehen gegen Arbeiter-Bewegungen und -Organisationen im westlichen Ruhrgebiet zwischen Revolution und Sozialistengesetz (1850–1878)*, Kliomedia, Trier, 2006, pp. 263–5; Sträter, *Die Vertreibung der Jesuiten aus Deutschland*, pp. 83–4. See also Gross, *The War Against Catholicism*, p. 281.

[121] Heinrich Meurer, *Jesuiten und Jesuitismus. Zur richtigen Würdigung der Jesuiten und ihrer Gegner*, Rasse'sche Verlagshandlung, Münster, 1881, pp. 56–60.

[122] Heinrich Meurer, *Jesuiten und Jesuitismus*, pp. 275–6.

Even into the 1890s, the legality and necessity of the Jesuit Law, as an exceptional law was disputed. An exchange between Hans Delbrück's *Preußische Jahrbücher* and *Germania* in 1890–91 disputed whether the laws should be retained or scrapped and whether the persecution of Jesuits amounted to the persecution of Catholics in general.[123] In the same year, and with the effects of the expulsions over the preceding twenty years in mind, the Jesuit Paul von Hoensbroech made an emotional appeal for the repeal of the law just two years before he would leave the Jesuit Order himself.[124] Declaring the expulsions to have been an unnecessary 'fear response', he argued that it had been:

> …respectable German men who were forced to find refuge abroad… They went, these men, and since then many of them have found a distant grave in foreign soil. They went without resentment and hatred for their enemies. But none of them left German soil without the feeling of deep melancholy and sorrow. The Jesuit too has a heart, and feels the injustice and shame of slander, and feels the separation from the Fatherland. It has become a favoured and often believed phrase, the 'Jesuit without a Fatherland'. But in the sense that it is used by those that oppose us, it houses a false and deeply offensive imputation…
>
> They have been hunted out of their homeland, from the areas of their long term, much loved, and beneficial activities. The storm of persecution sent them to Holland, England, North America, Brazil, Chile, South Africa, India. They were forced to live in often difficult and impoverished conditions, and condemned to unemployment or underemployment, however all of these injustices and miseries that hung over them did not stifle their love for and devotion to Germany and with complete conviction I can say that, just as we remained Jesuits despite the persecution and hostility, so too we have remained German Jesuits despite the expulsions and the bans.[125]

Against such sentiments, a polemical work written in 1893 by Gustav Ackermann attempted to stave off attempts to repeal the Jesuit Law by answering the charges of the law's opponents. It argued against the notion that it was an *Ausnahmegesetz*, on the grounds that it was in fact a defensive law aimed at protecting the nation from the threat of a foreign conqueror, by expelling those that wished to create a 'global Roman empire, a global clerical empire over all lands, peoples and governments'.[126] As to the contention that it was German citizens who had been expelled as a result of the Jesuit Law's expulsion clause, Ackermann did not attempt to deny that this had occurred, but instead mounted an unapologetic argument that, by virtue of their status as Jesuits, these German born clerics had given up their right to be treated as citizens:

[123] 'Jesuitismus und Katholicismus', *Preußische Jahrbücher* 67, 'Jesuitismus und Katholicismus', *Germania*, February 1891, reprinted in *Ein Wort für und wider die Jesuiten*, Druck und Verlag von Georg Reimer, Berlin, 1891.

[124] Healy, *The Jesuit Specter*, p. 95. Hoensbroech went on to become a staunch campaigner for the retention of the *Jesuitengesetz*. See Paul von Hoensbroech, *Das Jesuitengesetz*, Druck und Verlag von Breitkopf & Härtel, Leipzig, 1912.

[125] Paul von Hoensbroech, *Warum sollen die Jesuiten nicht nach Deutschland zurück? Eine Frage und eine Antwort*, Herder'sche Verlagshandlung, Freiburg, 1891, pp. 1–4.

[126] Gustav Friedrich Ackermann, *Das Jesuitengesetz, Vorberathung*. Carl Mathes, Thurm, 1893, pp. 3–5.

> Unfortunately the expelled are Germans, that is born in Germany to German parents, educated with German money. However they have become unfaithful to their Fatherland and have given themselves over in body and spirit to a power that is gripped in a war with Germany that has been, is and will be fought for centuries. Shall we then allow the troops of this foreign power into Germany, simply because Germans serve amongst their number as foreign legionnaires?…If Rome sends Germans against us, then we must fight against them and punish them not merely as national enemies, but as traitors.[127]

Even as late as 1913, Hermann Scholz indignantly refuted the claim of an *Ausnahmegesetz* in one of many pamphlets published by one of the *Protestantenverein*'s descendents, the *Evangelischer Bund*, which was devoted to the question of the law's regularity. The rather technical defence mounted by Scholz echoed that of Ackermann, namely that it was not an *Ausnahmegesetz*, but rather a *Notgesetz*, offering the state the necessary powers to defend itself against such 'foreign imports' and purveyors of 'extra-German influence' as the Jesuits. An *Ausnahmegesetz*, he argued, was a term only to be used to describe 'large scale tyranny, breaking of laws and the like'. With the Jesuit case, he continued, commentators should be more careful.[128] A year earlier, fellow *Evangelischer Bund* author Theodor Traub had been less coy, when he argued that it was self-evident that 'any state faced with the unscrupulous tools of a foreign sovereign would defend itself through an *Ausnahmegesetz*'. The Jesuits, he continued, were exceptional in their desire to bring about the universal rule of the Vatican, and 'exceptional cases needed to be combatted through exceptional laws'.[129] This was again disputed by Hans Delbrück in 1913, who argued that the Centre Party was now a loyal, government-friendly party and that while large settlements of Jesuits should remain restricted, individual Jesuits priests should be readmitted.[130]

Friedrich Kortkampf's 1872 declaration that the history of Germany was to be understood as the history of anti-Romanism is, to say the least overstated. [131] Nonetheless, as Margaret Anderson and Kenneth Barkin famously argued some thirty years ago, 'Imperial German history without Catholics is a history in which many of the main social, cultural and political developments are inexplicable.'[132] This is as true of the history of mass expulsions and exceptional laws in Germany as of any other area of political, social, economic, or cultural history. The case of the Jesuits demonstrates precisely how the initial steps in the direction of mass expulsions were born of the concern that the confessional heterogeneity of the

[127] Ackermann. *Das Jesuitengesetz*, p. 6.

[128] Hermann Scholz, *Ist das Jesuitengesetz ein Ausnahmegesetz? Und einige verwandte Fragen*, Verlag des Evangelischen Bundes, Berlin, 1913, pp. 4–7. See also Martin Wenck, *Im Kampf um das Jesuitengesetz. Ein Wort zum politischen Tagesstreit*, Verlag des Evangelischen Bundes, Berlin, 1913.

[129] Theodor Traub, *Die Jesuiten. Material zur Jesuitenfrage*, Verlag des Evangelischen Bundes, Berlin, 1912, pp. 28–9.

[130] Hans Delbrück, 'Das Jesuitengesetz', *Preußische Jahrbücher* 154, 1913, pp. 571–3.

[131] Kortkampf, *Für und wider die Jesuiten* (III), p. xi.

[132] Margaret Lavinia Anderson and Kenneth Barkin, 'The Myth of the Puttkamer Purge and the Reality of the Kulturkampf: Some Reflections on the Historiography of Imperial Germany', *Journal of Modern History* 54(4), 1982, p. 678.

empire would translate into a political threat. The fear of Catholicism as an alternative, transnational source of identification saw liberal and conservative nationalist *Reichstag* deputies move towards a series of laws that were deemed exceptional by those most affected, namely the constituents of the Catholic Centre Party. The exceptionality of these laws was not seen as residing in the fact that they were bracketed from the decision making processes of the *Rechtsstaat* by a metajuridical sovereign capable of bypassing constitutional norms, nor even that the Reich had declared a 'state of exception' (*Ausnahmezustand*), a 'state of siege' (*Belagerungszustand*) or a 'state of war' (*Kriegszustand*), enabling power to be concentrated in the hands of a few to manage a short period of crisis as per Article 68 of the constitution. Rather, the laws' 'exceptionality' lay in the fact that they targeted a specific group within the Reich, to the exclusion of others. With the democratic blessing of the newly formed *Reichstag*, if not that of Catholic citizens such as the rioters in Essen, Imperial Germany had found the constitutional and legal means to employ mass expulsions as a political tool.

3

'Class Justice'

The Expulsion of Socialists and the 'Minor State of Siege'

On a poster plastered on the walls of working class suburbs in late 1878, Berlin's leading Social Democrats bade farewell to their supporters, urging them to maintain a militant calm in the face of the expulsion of their leadership from the city:

> Party Comrades! Workers of Berlin! We must leave your midst and go into exile; we do yet not know how far away this furious persecution will drive us, but you may be sure of this, wherever we may be, we will always remain true to the common cause; we will always hold high the banner of the proletariat.[1]

With these words, the leaders of the Social Democratic Party and its press were driven out of the city, the first of the 797 socialists expelled from various German cities under Paragraph 28 (§28) of the Socialist Law (S*ozialistengesetz*).[2]

Despite the eagerness of *Reichstag* conservatives to attack the Social Democrats, their expulsion from various regions in Germany had by no means been the primary purpose of the anti-socialist legislation that had initially been proposed in May 1878. In the first, failed attempt to restrict the socialist press, and freedom of assembly and association, no expulsion measures or residency restrictions were included in the six paragraphs of the proposed law.[3] Unlike later in the year, this milder version of an anti-socialist law was met by an overwhelming majority of the *Reichstag* which refused to sanction the passage of legislation that so blatantly sought to legally disadvantage a rival political party. Even an assassination attempt on the Kaiser, which the conservative press speciously sought to link to the Social Democrats,[4] was seen as insufficient grounds for the passing of an exceptional law (*Ausnahmegesetz*), as it was repeatedly called by its opponents

[1] GStAPK Rep77 Tit 500 46 Bd 4, p. 109.

[2] Heinzpeter Thümmler. *Sozialistengesetz §28. Ausweisungen und Ausgewiesene 1878–1890*. Topos Verlag, Vaduz, 1979, p. 122. As Thümmler makes clear, many socialists were expelled from more than one city, with some even expelled from the same city more than once, meaning that while 797 individuals were expelled, the total number of expulsion orders was 891. On the broader effects of the anti-socialist legislation, see Vernon L. Lidtke, *The Outlawed Party. Social Democracy in Germany, 1878–1890*, Princeton University Press, Princeton, 1966, pp. 70–82.

[3] *Verhandlungen des Reichstages*. Bd 50, Aktenstück Nr 274, 'Gesetz, zur Abwehr sozialdemokratischer Auschreitungen', pp. 1591–3.

[4] Both the Centre's Joseph Edmund Jörg and the National Liberal Rudolf Bennigsen criticized the Bundesrat's linkage of anti-socialist legislation to Max Hödel's assassination attempt in their *Reichstag* speeches. See *Verhandlungen des Reichstages*. Bd 48. 54 Sitzung am 23 Mai, 1878, pp. 1498, 1504.

in the parliamentary debates of 23 and 24 May 1878.[5] For the Catholic Centre Party, the proposed law was simply a return to the spirit of legal exceptionalism that had enabled the *Jesuitengesetz* of 1872. Joseph Edmund Jörg described it as a Napoleonic, dictatorial proposal which would become the thin edge of a more broadly discriminatory, legislative wedge.[6] Ludwig Windthorst too caustically reminded the *Reichstag*'s suddenly principled liberals of the similarities between the two cases:

> These gentlemen who decreed the *Jesuitengesetz*, the gentlemen who allowed it to come to pass that priests who had done nothing more than offer the sacraments have been exiled from the Fatherland or interned in lonely islands without any contact to their fellow faithful, these gentlemen cannot, I believe, have any pause for thought in also enabling this *Ausnahmegesetz*, if they are only worried about its exceptional nature.[7]

On the other hand, the *Deutsche Reichspartei* deputy Eduard Georg Bethusy-Huc drew on a vigorous biological metaphor to underscore his support for the proposed 'removal' of the Social Democrats from the body politic (despite the fact that no expulsion measures had at this stage been proposed), arguing that the state was under assault and required a defence underpinned by extraordinary measures:

> Which organism endures foreign and poisonous spores, to use the expression of an earlier speaker, if they can cut them out? Which organism asks about the whys and wherefores of the method used to remove them from their body, when it is necessary for the preservation of their rights, their existence, their ability to live on?[8]

It was only after a second and more serious attempt on the Kaiser's life mobilized public opinion, however, that the *Bundesrath*'s push for anti-socialist legislation was successful, despite even less evidence for a link between the gunman Karl Nobiling and the Social Democrats than in the case of the earlier attempt by Max Hödel.[9] In the immediate aftermath, Prussia's semi-official press organ, the *Provinzial Correspondenz*, urged immediate action, claiming that 'the intellectual air that [Nobiling] breaths, from which his act took shape, is that of social

[5] *Verhandlungen des Reichstages*. Bd 48, 23 Mai, 1878, pp. 1495–1524 & 24 Mai 1878, pp. 1525–54. The Social Democrats refused to take part in the debate, as a statement read by Wilhelm Liebknecht made clear. This statement too described the bill as an *Ausnahmegesetz. Verhandlungen des Reichstages*. Bd 48, 23 Mai, 1878, p. 1497.

[6] Joseph Edmund Jörg, *Verhandlungen des Reichstages*. Bd 48, 54. Sitzung am 23 Mai, 1878, pp. 1497–9.

[7] Ludwig Windthorst, *Verhandlungen des Reichstages*. Bd 48, 55. Sitzung am 24 Mai, 1878, p. 1531.

[8] Eduard Georg Bethusy-Huc, *Verhandlungen des Reichstages*. Bd 48, 54. Sitzung am 23 Mai, 1878, p. 1500.

[9] For one Social Democrat's sense of the role played by the assassination attempts on the Kaiser in preparing the political conditions for the exceptional law to be passed, see Ignaz Auer, *Nach zehn Jahren. Material und Glossen zur Geschichte des Sozialistengesetzes*, German Cooperative Publishing, London, 1889, pp. 15–41. In the *Reichstag*, August Bebel argued that Nobiling's political proclivities were liberal and that the government's attempt to link him to the Social Democrats was a deliberate attempt to publicly discredit them before introducing anti-socialist legislation. *Verhandlungen des Reichstages*. Bd 51, 5. Sitzung, 16, Sept 1878, pp. 38ff.

democratic teachings'. Pressing the point further, the same edition reminded its readers of the National Liberal Party's refusal to support the anti-socialist legislation debated in May to curb 'social democratic unrest', publishing in full the speech of their Berlin deputy, constitutional expert and leader of the *Kathedersozialisten* Rudolf Gneist, who had dissented from his party earlier in the year and accused the *Reichstag* of irresponsibility in refusing to suspend legal precepts such as *habeas corpus* when dealing with Social Democrats. In light of the recent second assassination attempt, Gneist's May jeremiad and warning of a coming 'catastrophe' seemed prescient. With an eye to the most recent assassination attempt, the *Provinzial Correspondenz* reminded its audience of Gneist's earlier declaration that 'the efforts of the government to strengthen the powers of the authorities through legislation, to demand exceptional powers against the unrest caused by the Social Democrats are justified'[10] The *Freiburger Zeitung* too proclaimed on 4 June, 'this is the fruit of the insane precepts which some have thought could be dismissed with a contemptuous shrug! This new damnable assassination attempt vindicates the position we took on the Socialist Law. Fanatics—whether in this or any other region—cannot be defeated by rational argument.' The paper then went on to demand that 'the lawmakers in the *Reichstag* who refused the Socialist Law' should now ensure that 'legal means' were available to suppress social democracy.[11] For its part, the satirical *Kladderadatsch* accused politicians of having spent too much time 'gazing out the window', dreaming of the Ottoman Eastern question, at a time when the violent forces of nihilism and social democracy were threatening domestic stability.[12] With popular opinion now equating the assassination attempt with social democracy, August Bebel wrote in his memoirs of Bismarck's delight that, in the wake of the shooting, he could now use the ostensible socialist menace to 'push the National Liberals against the wall until they squeak'.[13]

Under this mounting public pressure, the National Liberals now fell into line with the demand for an anti-socialist law, a legal innovation which since 2 June had moved from an unsupportable, fringe Conservative wish to public expectation. Through their press organs, the National Liberals let it be known that they were ready to 'redeem their mistake from May' by agreeing to new legislation.[14] When a bill was presented for debate in the *Reichstag* in September and October of 1878, the *Bundesrat* pointedly reminded the *Reichstag* of the apparent consequences of their previous failure to legislate against socialist agitation before the second assassination attempt. In this new, higly charged radically altered political atmosphere, an anti-socialist law now found the majority support that was emphatically denied just months earlier, despite the fact that the new legislation was far more comprehensive than the May proposal, with the original six

[10] *Provinzial Corrensponden*z 17(23) 5 June 1878. The *National-Zeitung*, 2 June 1878 (Extrablatt) and the *Coburger Zeitung* 5 June 1878 also stressed Nobiling's ostensible social democratic links.
[11] *Freiburger Zeitung*, 4 June 1878. [12] *Kladderadatsch*, 16 June 1878, p. 304.
[13] August Bebel, *Aus meinem Leben. Bd II*, Verlag von JHW Dietz, Stuttgart, 1911, p. 413.
[14] Auer, *Nach zehn Jahren*, p. 41.

paragraphs now expanded to twenty-two in the draft legislation, ultimately ballooning to thirty in the final version of the law.[15]

Ascertaining the number of non-German citizens expelled under the Socialist Law is difficult and the handful of non-Germans officially reported as having been expelled due to their socialist agitation almost certainly underestimates the true numbers.[16] Although the Socialist Law's Paragraph 22 (§22) allowed for non-German Social Democrats to be expelled from the empire, use of the provisions available in §22 were unnecessary. As Prussia's later Interior Minister Robert von Puttkamer explained to one of his *Polizeipräsidenten*, foreign socialists could be expelled from under the more general and navigable expulsion provisions enabling the removal of burdensome foreigners ('*lästige Ausländer*').[17] As a result, their exact numbers were not recorded, dissolved within the broader population of those deported for vagabondage, begging, and petty crime. Overwhelmingly, the measures outlined in the Socialist Law were focused on German citizens whose adherence to social democratic principles rendered them a disloyal and dangerous element of the body politic, particularly in the period immediately following the assassination attempts upon the Kaiser.

With the measures primarily aimed at German rather than foreign socialists, the *Reichstag* was faced with having to negotiate its way around the same problem it had faced in the case of the *Jesuitengesetz*, of adhering to legal norms and respecting the rights of the citizen. In particular, the prohibition on exiling German citizens from the empire as well as the provisions for the freedom of movement within the empire (*Freizügigkeitsrecht*) preserved in German law imposed legal limits on the *Reichstag*.[18] As such, German socialists could not to be expelled from the empire entirely (although approximately 18 per cent of those targeted actually emigrated as a result of the oppressive effects of the law).[19] Instead, they were expelled from specific regions of the empire that were said to

[15] The initial 9 September 1878 draft of the legislation, as well as the Bundesrat's official reasoning for the legislation, complete with appendices can be found at *Verhandlungen des Reichstages*. 4. Legislatur Periode, 1878, Bd 2. (Anlagen), Aktenstück Nr 4, pp. 1–16.

[16] Thümmler lists only thirty foreign citizens, mainly from neighbouring Denmark and Austria Hungary directly affected by the anti-socialist legislation. See Thümmler, *Sozialistengesetz §28*, pp. 142–3.

[17] Reiterating existing constitutional powers, the third last sentence of §22 stated 'Ausländer können von der Landespolizeibehörde aus dem Bundesgebiete ausgewiesen werden.'

[18] The right to freedom of movement was not codified in the German Constitution, but rather was an extrapolation of the 1 November 1867 Freizügigkeitsgesetz from the Norddeutscher Bund. See Dieter C. Umbach, *Grundgesetz. Mitarbeiterkommentar und Handbuch*, CF Müller Verlag, Heifelberg, 2002, p. 736. Even this law offered the police the opportunity to expel socialists across state borders under §2, the so-called 'Vagabond paragraph'. See Heidi Beutin, '"Noch heute steigt mir das Blut zu Kopfe, gedenke ich jener Zeiten"—Alltag und Mentalität unter den Bedingungen eines Ausnahmesgesetzes: Julie und August Bebel in ihrem Briefwechsel', in Heidi Beutin, Wolfgang Beutin, Holger Malterer, and Friedrich Mülder (eds), *125 Jahre Sozialistengesetz. Beiträge der öffentlichen wissenschaftlichen Konferenz vom 28–30 November 2003 in Kiel*, Peter Lang, Frankfurt, 2004, p. 158.

[19] Thümmler's calculation is that of the 797 expelled, 146 went to North America, overwhelmingly after having been expelled from the port city of Hamburg and, to a lesser extent, from Berlin. Thümmler, *Sozialistengesetz §28*, pp. 149–50.

be threatened by the activities of the socialists. Thus, the pertinent passage of §28 stated:

> For districts or regions in which a danger to public safety exists due to the [social democratic, socialist or communist] activities referred to in §1.2, the central authorities of the states can make use of the following regulations, if they are not already permitted under state law, with the permission of the *Bundesrath* for a period of up to one year . . . 3. That permission for individuals who pose a threat to public safety or order to reside in those districts or regions can be refused.[20]

So as to frame the new measure within the body of existing law, the language used in the legislation delineating the powers of the Socialist Law was very specific. Originally, Bismarck had advised the new Interior Minister Botho zu Eulenburg that §130 and §131 of the 1871 German legal code, which forbade public agitation against the state and the government, offered a useful basis for a new anti-socialist law. In particular, parallels between their use (and expansion to include a specifically anti-clerical provision in §130a) during the *Kulturkampf* were noted. 'Just as the ultramontane press did earlier,' Bismarck opined, 'the social democratic press and agitation today indulge in fuelling class hatred and in the degradation of state institutions . . . without the relevant judicial powers being capable of redressing this.'[21] In the event, however, the *Reichstag* was presented with a far more muscular legal underpinning than that offered by the legal code; one that offered recourse to the emergency constitutional provisions for the suspension of civil liberties in times of political crisis. The proposed Socialist Law empowered the *Bundesrat* to declare a 'minor state of siege' (*kleiner Belagerungszustand*). The term 'state of siege' (*Belagerungszustand*) had a very precise legal meaning, invoking the powers of Article 68 of the constitution, which enabled the Kaiser to declare a *Kriegszustand* (state of war) thereby bringing into effect the conditions pertaining to the Prussian Law of 4 June 1851.[22] The 1851 law, to which Article 68 referred, pertained to circumstances beyond a general state of war; §2 of the

[20] Thümmler, *Sozialistengesetz §28*, p. 254. 'Für Bezirke oder Ortschaften, welche durch die im §1 Abs.2 bezeichneten Bestrebungen mit Gefahr für die öffentliche Sicherheit bedroht sind, können von den Zentralbehörden der Bundesstaaten die folgenden Anordnungen, soweit sie nicht bereits landesgesetzlich zulässig sind, mit Genehmigung des Bundesrats für die Dauer von längstens einem Jahre getroffen werden: . . . 3. Daß Personen, von denen eine Gefährdung der öffentlichen Sicherheit oder Ordnung zu besorgen ist, der Aufenthalt in den Bezirken oder ortschaften versagt werden kann.'

[21] Bismarck to Eulenburg, 28 June 1878 in GStAPK IHA Rep 77 Tit 500 Nr 46, Bd 1, pp. 48–51. The pertinent paragraphs read '§. 130. Wer in einer den öffentlichen Frieden gefährdenden Weise verschiedene Klassen der Bevölkerung zu Gewaltthätigkeiten gegen einander öffentlich anreizt, wird mit Geldstrafe bis zu zweihundert Thalern oder mit Gefängniß bis zu zwei Jahren bestraft. §. 131.Wer erdichtete oder entstellte Thatsachen, wissend, daß sie erdichtet oder entstellt sind, öffentlich behauptet oder verbreitet, um dadurch Staatseinrichtungen oder Anordnungen der Obrigkeit verächtlich zu machen, wird mit Geldstrafe bis zu zweihundert Thalern oder mit Gefängniß bis zu zwei Jahren bestraft.' *Strafgesetzbuch vom 15 Mai 1871*.

[22] 'Gesetz, betreffend die Verfassung des Deutschen Reichs. Vom 16. April 1871', *Bundes-Gesetzblatt des Deutschen Bundes* 16, 1871, p. 82. The *Bundesrat's* justification for its draft of the Socialist Law made clear this constitutional context from the very outset. *Verhandlungen des Reichstages*. 4. Legislatur Periode, 1878, Bd 2. (Anlagen), Aktenstück Nr 4, p. 8. See too the Introduction of this work.

1851 law made clear that a state of siege could also be declared during periods of civil disturbance (*Aufruhr*), 'in times of war as well as peace'.[23] According to §5 it also enabled the suspension of the constitutional order in either a general or a particular region.[24]

It was these existing legal possibilities which were stitched into the fabric of the new, second proposal for a *Sozialistengesetz*. The law subsequently passed by the *Reichstag* enabled the *Bundesrat* to deem particular regions as threatened by socialist agitation and therefore subject to those provisions of the 1851 law which specifically allowed for the peacetime declaration of a state of siege. By employing a bespoke legal condition known as the 'minor state of siege' (*kleiner Belagerungszustand*) the *Reichstag*'s Socialist Law of 1878 positioned social democratic political activities as the type of civil commotion envisaged by Article 68 of the constitution. In this way, the authors of the legislation ensured that the practice of expelling German socialists from particularly sensitive regions conformed with imperial law.

Yet, unlike in the case of the Jesuit Law, it was not primarily the expulsion measures that the law's *Reichstag* opponents saw as the most obvious abuse permitted by the legislation. Instead, far more attention was paid to the numerous, more obvious hindrances to party activities, newspaper production and to the freedom of speech that would make electioneering, fundraising, and party organization difficult for the Social Democrats. Indeed, the new expulsion provisions which had not appeared in the May bill were only fleetingly mentioned during the bill's first reading by the Centre Party's Peter Franz Reichensperger, who remarked that they were not in keeping with modern nineteenth-century notions of justice.[25] Apart from this brief attack on particular provisions, however, the first *Reichstag* discussion of the bill degenerated into epideictic praise and condemnation of socialism in general, with a late transnational turn, which compared the bill to previous exceptional French and British measures regulating the activities of leftists and Fenians.

[23] Paul Stoepel. *Preußischer Gesetz-Codex. Bd III*, p. 282. 'Gesetz über den Belagerungszustand. Vom 4. Juni 1851 … §2. Auch für den Fall eines Aufruhrs kann, bei dringender Gefahr für die öffentliche Sicherheit, der Belagerungszustand sowohl in Kriegs- als in Friedenszeiten erklärt werden. Die Erklärung des Belagerungszustandes geht alsdann vom Staats-Ministerium aus, kann aber provisorisch und vorbehaltlich der sofortigen Bestätigung oder Beseitigung durch dasselbe, in dringenden Fällen, rücksichtlich einzelner Orte und Distrikte, durch den obersten Militärbefehlshaber in denselben, auf den Antrag des Verwaltungschefs des Regierungsbezirks, wenn aber Gefahr im Verzuge ist, auch ohne diesen Antrag erfolgen.'

[24] Paul Stoepel, *Preußischer Gesetz-Codex. Bd III*, p. 282. 'Gesetz über den Belagerungszustand. Vom 4. Juni 1851 … §5. Wird bei Erklärung des Belagerungszustandes für erforderlich erachtet, die Artikel 5, 6, 7, 27, 28, 29, 30, und 36 der Verfassungs-Urkunde, oder einzelne derselben, zeit- und distriktweise außer Kraft zu setzen, so müssen die Bestimmungen darüber ausdrücklich in die Bekanntmachung über die Erklärung des Belagerungszustandes aufgenommen oder in einer besonderen, unter der namlichen Form (§3) bekannt zu machenden Verordnung verkündet werden. Die Suspension der erwähnten Artikel oder eines derselben ist nur für den Bezirk zulässig, der in Belagerungszustand erklärt ist und nur für die Dauer des Belagerungszustandes.'

[25] Peter Franz Reichensperger, *Verhandlungen des Reichstages*. Bd 51, 5. Sitzung, 16 Sept 1878, p. 33.

With the second reading of the bill, however, the specific measures of the proposal were debated individually. For their part, the conservative parties and National Liberals enthusiastically supported the restrictions, with the Conservative Albrecht von Schlieckmann explaining the need to link the expulsion measures of §20 of the Bill (which would become §28 of the Act) to the provisions of Article 68 of the constitution that allowed the government to suspend sections of the constitution. The ability to declare a *kleiner Belagerungszustand*, he explained, would offer a targeted, preventative measure aimed at ensuring that it never came to a fully blown, empire-wide *Belagerungszustand* requiring the involvement of the military and the full suspension of the liberty of all German citizens.[26] This stance was reiterated by the National Liberal Georg Beseler, who framed his approval of the measure with close reference to Article 68 of the constitution, as did Botho zu Eulenburg on behalf of the *Bundesrat*.[27]

Surprisingly, when it came time to debate the paragraph housing the expulsion measures, it was the Catholic Centre Party and not the Social Democrats that raised concerns about the circumstances in which a preventative 'minor state of siege' might be declared. As August Bebel later admitted in his memoirs, the Social Democrats had thought it very unlikely that the proposed *Belagerungszustand* would actually be invoked even if the law was passed.[28] It was the Centre Party's Ludwig Windthorst who foresaw the activation of §28 in social conditions that were not those of open revolution, while the Social Democrats, like the liberal parties, took at face value the assurances given by the *Reichstag* commission (which had been established to scrutinize the bill) that the provisions were only meant for times of utter lawlessness, rather than for the robust but lawful hurly-burly of routine political activity.[29] Windthorst alone urged the *Reichstag* to remove the entire paragraph permitting expulsions from the law, seeing it as an enduring threat to the constitutional liberty of all German citizens. With the experience of the *Jesuitengesetz* looming large in the subtext of his speech, the vagueness of the proposed expulsion measures was denounced by Windthorst, because it enabled a minor state of siege to be announced whenever a 'threat to public safety' was deemed to exist, meaning that it could be announced anywhere at any time when political circumstances no longer favoured the government. 'So general [a measure], so without any guarantee', he despaired, '…I warn you not to accept §20. I repeat, support it today and you will never be able to free German law from its grasp.'[30]

[26] Albrecht von Schlieckmann, *Verhandlungen des Reichstages*. 14. Sitzung, 16 Oktober 1878, pp. 307–9.

[27] *Verhandlungen des Reichstages*. 14. Sitzung, 16 Oktober 1878, pp. 310–13.

[28] August Bebel, *Aus meinem Leben. Bd III*, Verlag von JHW Dietz, Stuttgart, 1914, pp. 24–5.

[29] On the deliberations within the commission, see Richard Höinghaus, *Gesetz gegen die gemeingefährlichen Bestrebungen der Sozialdemokratie. Ergänzt und erläutert durch die amtlichen Materialen der Gesetzgebung*. Verlag von Gustav Hempel, Berlin, 1878, pp. 81–6. On the ineffectiveness of the commission and the misreading of Eulenburg and Bismarck's intentions in §28 by the National Liberals, see Franz Mehring, 'The Law Against the Socialists', in Frank Mecklenburg and Manfred Stassen (eds), *German Essays on Socialism in the Nineteenth Century: Theory, History and Political Organisation, 1844–1914*, Continuum International Publishing, New York, 1990, p. 107.

[30] Ludwig Windthorst, *Verhandlungen des Reichstages*. 14. Sitzung, 16 Oktober 1878, pp. 313–16. §20 of the draft bill would become §28 of the law.

Also raised by Windthorst was the possibility that Social Democratic *Reichstag* deputies might be forced from Berlin as a result of the declaration of a *kleiner Belagerungszustand*—an idea that seemed outlandish at the time, but was in fact proposed by Bismarck in 1879, only to be defeated in the *Reichstag*.[31] Windthorst, however, was a voice in the wilderness and by the third reading of the bill on 19 October, the expulsion measures were assented to without any debate.[32] With the voting 221 for and 149 against, the Socialist Law was accepted in its entirety.[33] What one workers' newspaper called 'the sword of Damocles' now hung over the entire social democratic movement.[34] Notwithstanding a complaints commission designed to investigate abuses that was cobbled on to the law by the National Liberals, the introduction and oversight of the measures was placed under the jurisdiction of Interior Minister Eulenburg, who enthusiastically embraced the opportunity to use the new legislation to its maximum effect.[35]

As a result of the fact that the announcement of a *kleiner Belagerungzustand* was site specific, the expulsion of socialists from various parts of Germany was staggered over more than a decade, with spikes in the numbers of the expulsions occurring as new regions were declared to be subject to the minor state of siege provisions. On 28 November 1878, expulsions began in Berlin and its surrounds. The measures were extended to Hamburg, Altona, and the region surrounding them by the Hamburg Senate on 28 October 1880 while the state government of Saxony petitioned for a *Belagerungszustand* to be declared in and around Leipzig on 27 June 1881. Frankfurt, Offenbach, and the surrounding region did not follow suit until 16 December 1886. Smaller centres too were subject to the provisions of §28, with Spremburg declared to be under a minor state of siege on 20 May 1886, and Stettin, Grabow, and Altdamm expelling socialists after 14 February 1887.[36]

The 'mass expulsion' of socialists from Berlin occurred just ten days after the Social Democrats had contested Berlin's local elections, when it was announced in the *Reichsanzeiger* on 28 November 1878 that 67 socialists had just 48 (or in a few cases 72) hours to sort out their financial affairs, bid their families farewell and leave Berlin.[37] This first wave of expulsions sought to remove the most active and prominent Social Democratic Party members from Berlin whose presence and high profile work on behalf of the party had long galled the police.[38] The grounds

[31] Franz Mehring, 'The Law Against the Socialists', p. 110.

[32] *Verhandlungen des Reichstages*. 16. Sitzung, 19 Oktober 1878, p. 386.

[33] *Verhandlungen des Reichstages*. 17. Sitzung, 19 Oktober 1878, p. 389.

[34] *Organ für Tabak-Arbeiter Deutschlands*, 28 September 1878, in GStAPK IHA Rep77 Tit 500 46, Bd 4, p. 160.

[35] Karl-Ludwig Günsche and Klaus Lantermann, *Verbieten Aussperren Diffamieren. Hundert Jahre Sozialistengesetz und verwandte Praktiken*, Europäische Verlagsanstalt, Cologne, 1978, p. 56.

[36] Thümmler, *Sozialistengesetz §28*, pp. 33, 57, 77, 88, 94, 110.

[37] The term *Massenausweisungen* was used by both Eduard Bernstein and August Bebel. See Eduard Bernstein, *Geschichte der Berliner Arbeiter-Bewegung, Bd II*. Buchhandlung Vorwärts, Berlin, 1907, August Bebel, *Aus meinem Leben. Bd III*, p. 25.

[38] Thümmler, *Sozialistengesetz §28*, p. 35. By 1890, the number of expulsions from Berlin and its surrounds was 274—31 per cent of those expelled under the Socialist Law. Thümmler, *Sozialistengesetz §28*, p. 122.

given for the exceptional measures were that the Kaiser, freshly recovered from his wounds, was to formally re-enter Berlin and therefore required protection from possible assassins.[39] More broadly, as the Prussian police saw it, Berlin was 'the citadel' of German socialism, and was the most rational choice for the initial deployment of the resources offered by expulsion provisions of the *Sozialistengesetz*.[40] Prussia's police commissioner Guido von Madai, however, hinted at the coming inclusion of other cities under the jurisdiction of §28.[41] Although some of the expelled made their way to New York where they were fêted by expatriate German socialists, the majority remained in Germany; moving to Hamburg and Leipzig, or relocating to the cusp of the declared exclusion zone, so as to remain within reach of their families.[42]

Beginning with Berlin, but continuing elsewhere, the family life of the targeted socialists suffered enormously as a result of the expulsions, to the extent that Madai saw fit to brief Eulenburg on the extent of the immiseration caused by the laws in case the issue was debated in the *Reichstag*.[43] The financial position of working class families was already precarious, with the economic crisis of the late 1870s having led to a drop in wages, a rise in working hours and the gradual dismantling of unions.[44] With the expulsions compounding their difficulties, twenty-one families were pushed into bankruptcy in the first round of expulsions from Berlin, a pattern repeated in other cities later. Even prominent party officials such as August Bebel would later struggle to support their families and themselves during the period of the expulsions.[45]

Upon receiving their expulsion orders, party members were issued with an expulsion identity card, which urged 'like-minded comrades' to assist the carriers in any way they could.[46] For their part, the wives of some expelled workers attempted to fill the vacancies or run the businesses left by their husbands, only to find that many were barred from operating their husbands' businesses because the operating licences and official permissions had only been granted in the name of their husbands.[47] It was against this backdrop that August Bebel urged for the financial independence of women in his 1879 work *Die Frau und der Sozialismus*,

[39] Auer, *Nach zehn Jahren*, pp. 65–6; Eduard Bernstein, *Geschichte der Berliner Arbeiter-Bewegung, Bd II*, pp. 14–16; August Bebel, *Aus meinem Leben. Bd III*, p. 24.

[40] Madai, 11 Dec 1878, Polizei Präsidium Nr 3660 PJI, reproduced in Reinhard Höhn, *Die vaterlandslosen Gesellen. Der Sozialismus im Licht der Geheimberichte der preußischen Polizei 1878–1914*, Westdeutscher Verlag, Cologne, 1964, p. 5.

[41] Madai, Polizei Präsidium Nr 3692 PJI, reproduced in Reinhard Höhn, *Die vaterlandslosen Gesellen*, p. 12.

[42] Auer, *Nach zehn Jahren*, p. 68; Eduard Bernstein, *Geschichte der Berliner Arbeiter-Bewegung, Bd II*, p. 21; Thümmler, *Sozialistengesetz §28*, p. 150.

[43] GStAPK IHA Rep 77 Tit 500 Nr 46 Bd 6, p. 100.

[44] Alfred Förster, *Die Gewerkschaftspolitik der deutschen Sozialdemokratie während des Sozialistengesetzes*, Verlag Tribüne, Berlin, 1971, p. 24.

[45] August Bebel to Julie Bebel, 3 September 1881, in Ursula Herrmann (ed.), *August und Julie Bebel, Briefe einer Ehe*, Dietz, Bonn, 1997, pp. 91.

[46] BA Berlin RY20/II 145/1 Sozialdemokratische Partei Deutschlands Parteivorstands, p. 3.

[47] Eduard Bernstein, *Geschichte der Berliner Arbeiter-Bewegung, Bd II*, p. 28.

with crippling poverty afflicting many working class households whose matriarchs struggled to subsist in the absence of their activist husbands.[48]

Working class families facing financial ruin, however, quickly became the object of a spontaneous mutual assistance operation organized by those party members who had not yet been expelled, such as Hermann Grimpe who was heavily involved in the campaign prior to his own expulsion, which eventually took him first to Hamburg and thence Paris. Grimpe wrote of the mutual assistance campaign:

> Although the party's coffers were empty . . . very quickly collections were taken up in every workplace and factory, in every apartment and house, and the yield distributed to the departing. . . . For we who remained fell the task of caring for the families of the expelled, and truly this was no small source of concern. Every week these families needed an income to be brought to them—an organizational work of Herculean proportions to be accomplished in the shortest of times under the most difficult conditions and greatest danger. The police spies shadowed the known comrades day and night, the factories were all under police surveillance during the work day and when the comrades under surveillance left the factories or workplaces, the police shadows were once again on their heels and could only be shaken by a regular sprint. Under such conditions the necessary organizational work was twice, triple, no tenfold more difficult. And yet it was accomplished. And this work proved itself and with few exceptions continued throughout the entire period of the Socialist Law.[49]

Reports of the hardship imposed by the expulsions was a consistent theme of the social democratic press, which urged mutual assistance and even went to the lengths of publishing not merely addresses but also directions to the homes of the afflicted, as one example from the *Volks-Zeitung* in December 1878 shows:

> The families of the expelled Social Democrats, we have been informed, find themselves for the most part in direst need. In this state the wife of the leatherworker Anders, for example (Steglitzerstraße 53, in the cellar) awaits the birth of her child, while the family of the woodturner Baethke in Rixdorf is completely destitute. The wife of the cigar maker Dietzmann (Elizabethestraße 65) cannot carry on without support and the business of the carpenter Einer (Steglitzerstraße 39, 3rd floor) has been ruined. The family of the cooper Fischer (Amalienstraße 6 in the cellar) consisting of a wife and four children, find themselves in a similarly dire position. The circumstances of the family of typesetter Greifenberg (Bergstraße 72), like those of bricklayer Hahn (Koppenstraße 52 in the cellar) have been shattered by the imprisonment of the provider. The wife of the bricklayer Körner (Grünstraße 23, 1st floor courtyard) is unable to work due to her two small children. Still worse is the situation of the wife of the carpenter Lemke (Waldemarstraße 41, 4th floor), who besides 3 children must also provide for her sick mother. The family of the bricklayer Albert Paul (Weißenburgerstraße), and that of the weaver Florian Paul (Köpnickerstraße

[48] August Bebel, *Die Frau und der Sozialismus*, Dietz, Bonn, 1994.

[49] Hermann Grimpes, cited in Eduard Bernstein, *Geschichte der Berliner Arbeiter-Bewegung, Bd II*, p. 21. Also paraphrased in Karl-Alexander Hellfaier, *Die deutsche Sozialdemokratie während des Sozialistengesetzes 1878–1890. Ein Beitrag zur Geschichte ihrer illegalen Organisations- und Agitationsformen*, Deutscher Verlag der Wissenschaften, Berlin, 1958, p. 84.

> 162, courtyard) are destitute and in dire need of assistance. The family of the porter Malkowitz (Tieckstraße 23), wife and 4 children has lost everything. The wife of the cigar maker Scharlibbe (Bernauerstraße 103, 4th floor), that of the tailor Schröer (Köpnickerstraße 170, 4th floor, the metalworker Sigerist (Boppstraße 2, courtyard), the carpenter Stenzleit (Wrangelstraße 13, 3rd floor) are similarly without means and require urgent help. The business of clockmaker Thierstein (Markusstraße 53) has been ruined, as has the business of barber Wernedorf (Grüner Weg 22), while the wife of the publican Wiechmann (Rixdorf), who has 4 children to feed, has been forbidden to take over her husband's business. The wife of the cobbler Woelky (Britzerstraße 4, 4th floor) is sick and in embattled circumstances. The family of the stonemason Zabel (Kastanien-Allee 3), also blessed with 4 children, is completely destitute. A sorry list.[50]

The later correspondence between August and Julie Bebel and Julie Bebel and Natalie Liebknecht similarly testified to these difficulties.[51] Women such as Julie Bebel were drawn into the party organization on behalf of their husbands, combining the single-handed rearing of children with the continuation of their husbands' party work. Together with Natalie Liebknecht and Clara Hasenclever, Julie Bebel collected donations for the families of the expelled.[52] From here she moved directly into the working class women's movement,[53] with this activism on at least one occasion leading to her also being threatened by the police with expulsion.[54] Another activist wife, Anna Schuster, stepped in as the Social Democrats' campaign manager for Freiberg in November of 1881 after her husband Ernst Johann Oskar Schuster was arrested. Here she successfully assisted Max Kayser's re-election to the *Reichstag*. 'It was and indeed remains a unique feature of this election,' August Bebel would later recall, 'that the electorate Freiberg was won by a woman.' Nonetheless, familial and marital difficulties followed the long absences mandated by the expulsions, gaol sentences, and party work engendered by the law, something noted by Julie Bebel in a letter to Natalie Liebknecht where she expressed her regret that she could not have her husband with her because of the *kleiner Belagerungszustand* and the increasing demands of his political work. Misunderstandings and jealousy arose too as the time apart grew, and August Bebel fought to keep his wife from dwelling on the 'darkest side' of their separation. To lighten his wife's mood when his nine-month gaol term was handed down in 1886, Bebel compared this favourably with a trip to Germany's Africa colonies, which would be 'more uncomfortable and far more dangerous'.[55]

The ceaseless work of the wives of expelled and gaoled socialists notwithstanding, depriving families of the income of their male breadwinners through

[50] 'Die Familien der ausgewiesenen Sozialdemokraten', *Volks-Zeitung—Organ für Jedermann aus dem Volk*, 19 December 1878 in GStAPK IHA Rep 77 Tit 500 Nr 46 Bd 6, p. 103.

[51] Herrmann (ed.), *August und Julie Bebel*. See also Beutin, 'Noch heute steigt mir das Blut zu Kopfe', pp. 167ff.

[52] Herrmann (ed.), *August und Julie Bebel*, p. 627.

[53] Julie Bebel to August Bebel, 18 Mai 1886 in Herrmann (ed.), *August und Julie Bebel*, pp. 218–20.

[54] August Bebel to Julie Bebel, 16 Juli 1881, in Herrmann (ed.), *August und Julie Bebel*, pp. 78–80.

[55] Beutin, 'Noch heute steigt mir das Blut zu Kopfe', pp. 169–73.

expulsions inflicted grave hardship on many families, as police authorities readily conceded.[56] Yet, perversely, the declaration of a *kleiner Belagerungszustand* and the subsequent expulsion of highly esteemed party activists sparked a reinvigoration of the movement at the base as the party was forced underground.[57] As Grimpe testified, the simultaneously traumatizing and galvanizing effects of the mutual assistance operation lent both the party and its social milieu a renewed cohesion that arguably countered the fragmentation of the party that was the goal of the legal sanctions against the party.[58] If it did not 'complete the revolutionary education of the German workers' as Engels suggested it might,[59] it nonetheless assisted in the scattering of highly motivated party workers to regions hitherto not as politicized as those areas covered by the *Belagerungszustand*, offering an unexpected opportunity for the expansion of the party base.[60] As the state ministry in Neustrelitz, Mecklenburg complained, Social Democrats were beginning to proselytize in regions where they had previously not been seen.[61] It also broadened the scope for acts of socialist solidarity, particularly in the shape of charitable collections. The farewells of expelled socialists at railway stations were transformed into vigorous demonstrations against the expulsion measures,[62] and a Leipzig test case aimed at deeming the collection of funds for the families of those expelled from Berlin an illegal party activity failed in the courts.[63] In fact, these collections struck a chord not only amongst the party's supporters, but also led prominent non-socialists to contribute to the collections for families experiencing material hardship brought about by the expulsions, including the *Reichstag* liberals Eduard Lasker, Ludwig Loewe, and Eduard Zimmermann.[64] The majority of

[56] Madai to Eulenburg, GStAPK IHA Rep 77 Tit 500 Nr 46 Bd 5, pp. 142–6.

[57] Reinhard Höhn, *Die vaterlandslosen Gesellen*, pp. xxxiii–xxxv, Madai 29 Dec 1879 in Höhn, *Die vaterlandslosen Gesellen*, pp. 24–5.

[58] Auer, *Nach zehn Jahren*, p. 69. 'Der Belagerungszustand, diese "schneidigste" Waffe des Sozialistengesetzes, erwies sich schließlich als das beste Agitationsmittel für die Sozialdemokratie.' Georg Eckert, ‚Die Konsolidierung der sozialdemokratischen Arbeiterbewegung zwischen Reichsgründung und Sozialstengesetz', in Wolfgang Mommsen (ed.), *Sozialdemokratie zwischen Klassenbewegung und Volkspartei*, Athenäum Fischer, Frankfurt, 1974, p. 51. That this point was often made in the hagiographic Cold War accounts of historians from the GDR and the West German Left does not make it untrue. See Thümmler, *Sozialistengesetz §28*, p. 32; 'Aber die Ausweisungen erwiesen sich für die herrschende Klasse als Bumerang', Wolfgang Pack, *Das parlamentarische Ringen um das Sozialistengesetz Bismarcks 1878–1890*, Droste Verlag, Düsseldorf, 1961, p. 116. 'Durch ihre Vertreibung von Familie und Arbeitsplatz aufs äußerste erbittert, zogen die Gemaßregelten durch ganz Deutschland, weckten mit ihrer haß-erfüllten Agitation die Genossen aus ihrer Lethargie auf und trugen maßgeblich zur Neuorganisation der Bewegung und zum Wiederbeginn der Parteitätigkeit bei.'

[59] Friedrich Engels (1879), cited in Förster, *Die Gewerkschaftspolitik der deutschen Sozialdemokratie*, pp. 26–7. As a result of the galvanizing effects of the law, Engels took to referring to Bismarck as 'Freund Bismarck'. See Friedrich Engels, 'Das Ausnahmegesetz gegen die Sozialisten in Deutschland—Die Lage in Rußland', *La Plebe* (12), 30 March 1879, as cited at <http://www.mlwerke.de/me/me19/me19_148.htm>.

[60] Bebel, *Aus meinem Leben, Bd III*, pp. 27–8.

[61] Bismarck to Eulenburg, GStAPK IHA Rep 77 Tit 500 Nr 46 Bd 5, pp. 108–9.

[62] Anon, *Zwölf Jahre Socialistengesetz. Ein Beitrag zur Geschichte des Socialistengesetzes und der socialdemokratische Bewegung in Deutschland*, Verlag der Germania, Berlin, 1890, p. 37.

[63] Bebel, *Aus meinem Leben, Bd III*, pp. 25–7.

[64] Bernstein, *Geschichte der Berliner Arbeiter-Bewegung, Bd II*, p. 22.

funds, nonetheless came from party coffers, with the party paying 27,650 Marks to support those requiring assistance between the beginning of the anti-socialist measures in 1878 and 1 August 1880.[65]

If the expulsions led to widespread expressions of solidarity with the families of those directly affected by the expulsions, the party nevertheless demonstrated an early vulnerability in terms of internal dissent, as disagreement broke out as to whether the appropriate response to the *Ausnahmegesetz* was lawful, parliamentary protest as Liebknecht and Bebel urged or whether a radicalization and a turn to direct revolutionary foment was appropriate as Johann Most now advocated. As Guido von Madai's police reports made clear,[66] the party struggled to overcome the enthusiasm in some quarters of the party for Most's embrace of the principle of 'propaganda by deed', as laid out in his London paper *Freiheit* in 1879, as the correct response for the exceptional Socialist Law. With the *Sozialistengesetz* ostensibly a reaction to the regicidal tendencies of the Social Democrats, Most's continued demands for just such violent action, labelled 'nihilistic' by the police, proved difficult for the party to reconcile to their position of principled subjection to the law and pursuit of the parliamentary route. While the word 'legal' was removed from the Social Democratic Party's pledge to 'strive by all legal means' to achieve its goals, in recognition of the fact that the law had changed so radically that there were virtually no legal means of agitation left, the majority of the Social Democrats remained unconvinced that this meant a lurch towards violence was warranted. Accordingly, Most and his fellow radical Wilhelm Hasselmann were expelled by the party for their uncompromising stance at the Wyden Conference in Switzerland in 1880, in an attempt to preserve party unity in the face of the anti-socialist law.[67]

Police surveillance continued to monitor the effects of the laws and the movements of those expelled to other German cities and towns.[68] As new cities were affected by the minor state of siege provisions, the number of expulsions picked up once again. For many of those expelled from Berlin who had sought refuge in Hamburg and Leipzig, the extension of the *Belagerungszustand* to these two cities in 1880 and 1881 respectively (and others thereafter) meant that they experienced a second and for an unlucky handful even a third expulsion. Of the 274 socialists expelled from Berlin, seventy-one were then later expelled from other German cities under §28, with forty-three of them expelled from Hamburg/Altona and

[65] *Protokoll des Kongresses der Deutschen Sozialdemokratie. Abgehalten auf Schloß Wyden in der Schweiz vom 20 bis 23 August 1880*. Verlag von A Herter, Zürich, 1880, p. 14. This figure does not include the significant amounts raised in local collections that did not flow through the party coffers first, which the minutes of the Wyden Congress estimated would roughly double the amount named above.

[66] For the Prussian police report on the party split see Madai, 31 Dec 1880, Polizei Präsidium Nr 9860 secret, also reproduced in Höhn, *Die vaterlandslosen Gesellen*, pp. 51–67.

[67] *Protokoll des Kongresses der Deutschen Sozialdemokratie,* 1880, pp. 27–9, 42–3.

[68] For details on individual cases of arrests, expulsions, and printing bans on periodicals, as well as the movements of Social Democrats once expelled, see GStAPK IHA Rep 77 Tit 500 Nr 46 Bd 5 'Die Ausführung des Gesetzes vom 21 Oktober 1878 über die Abwehr der sozialdemokratischen Ausschreitungen'.

fifteen from Leipzig. For twelve of them, the experience of a second expulsion from Hamburg was enough and they left Germany from the port city, the majority of those sailing for North America.[69] The majority of those who left Hamburg for the United States, however, had been expelled under §28 for the first time and the seventy-two individuals who emigrated to North America after being expelled for the first time from Hamburg represented only a fraction of the 333 individuals expelled from Hamburg/Altona.[70]

With the city having required the support of labour organizations in its quest to stave off Berlin's attempts to include the city in a revised customs and taxation regime,[71] Hamburg's Senate had for a long time effectively resisted pressure from Berlin to furnish the *Bundesrath* with a request that it declare a *Belagerungszustand* in the region, insisting that local authorities were well and truly able to maintain law and order without such exceptional measures.[72] Nonetheless, the pressure on Hamburg continued to mount, particularly as Social Democrats increased their vote at the national level to the extent that, despite the extreme difficulty of campaigning under the Socialist Law, Georg Wilhelm Hartmann was actually elected to the *Reichstag* by a margin that severely embarrassed his liberal rivals.[73] Finally, however, as its anti-*Zollverein* campaign began to founder, the Hamburg Senate capitulated. Having previously run its own parallel programme of anti-socialist policing under local control, Hamburg now conceded to Berlin's wish and petitioned for the *Belagerungszustand* to be extended to Hamburg in October 1880.[74]

Almost immediately, seventy-five socialists were ordered to leave the city and its surrounds, sixty-seven of whom were fathers with dependants.[75] By the end of 1880 alone, this figure would rise to a total of 127 expulsions and by 1890, 335 had been expelled from Hamburg—38 per cent of all those expelled under the laws, making Hamburg the city most severely affected by §28. When it is considered

[69] Thümmler, *Sozialistengesetz §28*, pp. 119–20, 150. For the self-descriptions of those who left Germany for North America, see Auer, *Nach zehn Jahren*, pp. 55–81.

[70] Thümmler, *Sozialistengesetz §28*, p. 122.

[71] William Otto Henderson, *The Zollverein*, Routledge, New York, 1984, pp. 332–5; Heinrich Laufenberg, *Geschichte der Arbeiterbewegung in Hamburg, Altona und Umgebung, Bd II*, Hamburger Buchdruckerei, Hamburg, 1931, pp. 129–41.

[72] Laufenberg, *Geschichte der Arbeiterbewegung in Hamburg Bd II*, pp. 203–10.

[73] The margin was 13,155 votes for the Social Democrats, compared to 6,455 for the *Fortschrittspartei* and 3,581 for the *Nationalliberalen*. Helga Kutz-Bauer, 'Arbeiterschaft und Sozialdemokratie in Hamburg vom Gründerkrach bis zum Ende des Sozialistengesetzes', in Arno Herzig, Dieter Langewiesche, and Arnold Sywottek, *Arbeiter in Hamburg. Unterschichten, Arbeiter und Arbeiterbewegung seit dem ausgehenden 18. Jahrhundert*, Verlag Erziehung und Wissenschaft, Hamburg, 1983, pp. 185–6; Laufenberg, *Geschichte der Arbeiterbewegung in Hamburg Bd II*, pp. 155–6; Hellfaier, *Die deutsche Sozialdemokratie während des Sozialistengesetzes 1878–1890*, pp. 120–1.

[74] Bebel, *Aus meinem Leben, Bd III*, pp. 160–4. Rainer Hering argues that the Hamburg police, in comparison to the Altona and Berlin police, were fairly relaxed about the Social Democrats prior to the introduction of the Socialist Law. See Rainer Hering 'Das Sozialistengesetz und der Überwachungsstaat. Die Politische Polizei in Hamburg', in Beutin et al., *125 Jahre Sozialistengesetz*, p. 89.

[75] Laufenberg, *Geschichte der Arbeiterbewegung in Hamburg Bd II*, pp. 210–11; Auer, *Nach zehn Jahren*, pp. 22–30.

too that forty-three of those expelled from Hamburg had already been expelled from Berlin, and that seventy-two decided to emigrate to America, the extent of the effects on both individuals and the Social Democratic Party of extending the minor state of siege zone to Hamburg becomes apparent.[76] Once again, however, the party's grassroots supporters were able to organize a relief fund for the affected families that was so successful that only a single payment of 1,000 Marks was required out of the party's funds, with the rest being raised by party members and sympathetic residents in Hamburg and elsewhere. Within six days of the *kleiner Belagerungszustand* being declared, 8,200 Marks had been raised for the afflicted families, with contributions coming from workers' associations as far afield as Belgium and Switzerland. By the end of the first year of Hamburg's inclusion in the exclusion zone, 27,595 Marks had been distributed amongst afflicted families. This support did not vanish over the course of the Socialist Law with, for example, construction workers each continuing to contribute 50 pfennigs (and later 1 Mark) per week to the relief fund. With over 7,000 construction workers in the city, Hamburg's socialists were able to look after the families of their own.[77] Politically the party simply went underground, drawing upon a deep reservoir of members to replace the expelled members with others from the rank and file, allowing it to continue to function locally and in elections at the various levels of government.[78]

The same pattern was in evidence in Leipzig, where the Saxon state government's hitherto refusal to bow to Prussian pressure to include Leipzig within the restricted zone, had long been seen as a 'thorn in the eye' of Berlin.[79] Bebel recorded that as early as November 1880, the Prussian government had put pressure on Saxony to petition the *Bundesrath* for the declaration of a *kleiner Belagerungszustand*, but without success.[80] This pressure continued into 1881 and during the *Reichstag* debate over §28 on 30 March 1881. When Ignaz Auer made clear the effects of the expulsions on the families of the party's activists, Puttkamer offhandedly, but nonetheless pointedly singled out Leipzig as yet another city that had been endangered by socialist agitation and affirmed that the Saxon government might also be persuaded to embrace expulsions.[81] The press in Saxony at this point reported that Puttkamer's speech only underlined the difference of opinion on the utility of §28.[82] Undeterred

[76] Thümmler, *Sozialistengesetz §28*, pp. 117–22, 150. The majority of those who emigrated were tobacco workers. Laufenberg, *Geschichte der Arbeiterbewegung in Hamburg Bd II*, pp. 214–19.

[77] Hellfaier, *Die deutsche Sozialdemokratie während des Sozialistengesetzes 1878–1890*, pp. 132–7; Bebel, *Aus meinem Leben, Bd III*, pp. 161–2; Laufenberg, *Geschichte der Arbeiterbewegung in Hamburg*, pp. 214–16. Also drawing on Hellfaier is Kutz-Bauer, 'Arbeiterschaft und Sozialdemokratie in Hamburg', p. 186.

[78] For the precise structure and regulations for the functioning of the party in the region during its underground period, see Hellfaier, *Die deutsche Sozialdemokratie während des Sozialistengesetzes 1878–1890*, pp. 122–30.

[79] Helga Berndt, *Die auf Grund des Sozialistengesetzes zwischen 1881 und 1890 Ausgewiesenen aus Leipzig und Umgehend. Eine Studie zur sozialen Struktur der deutschen Arbeiterklasse und Arbeiterbewegung*. Unpublished PhD dissertation, Humboldt Universität, Berlin, 1972, pp. 77–80.

[80] Bebel, *Aus meinem Leben Bd III*, p. 162.

[81] Puttkamer, *Verhandlungen des Reichstages*, 25 Sitzung, 30th März 1881, p. 638.

[82] GStAPK IHA Rep 77 Tit 500 Nr 46C, p. 2.

and supported by Bismarck,[83] Puttkamer also privately stressed the case for the declaration of a state of siege in Leipzig in his conversations with Berlin's *Polizeipräsident*, Guido von Madai, whom he instructed to negotiate with the state government of Saxony.[84] Puttkamer's caveat, however, was that no sudden announcements be made until after the current *Reichstag* sessions, given how sensitive the expulsions issue had become. Madai replied that his intelligence in Leipzig was admittedly hazy, but that for any suppression measures there to have any effect, the police authorities in Leipzig would have to be somewhat more energetic in their approach to the suppression of socialism than they had hitherto proven themselves to be.[85]

Madai's disapproving words about Leipzig's anti-socialist measures made their way via Puttkamer to Bismarck in May 1881, who then exerted not inconsiderable pressure on Saxony's Interior and Foreign Affairs Minister Hermann von Nostiz-Wollwitz in the *Bundesrath*, who apologized for the apparent recalcitrance of Leipzig's police and promised to clear the way for the application of §28 to Leipzig. On 15 June, Madai openly declared in his half-yearly report on socialist activities that the next logical step was to place Leipzig under the provisions of §28, erroneously predicting that if this was done the Social Democratic Party would be sent bankrupt.[86] On 23 June 1881, Saxony's Cabinet capitulated, deciding to apply for the declaration of a *kleiner Belagerungszustand* over Leipzig and its surrounds, a request which Bismarck received on 24 June. To the surprise of the Saxons, Bismarck loftily replied that it had already been listed as an agenda item for the *Bundesrath* session that day, irrespective of their request. Had Dresden not asked the *Bundesrath* to consider their application for Leipzig, he implied, Berlin may have taken the initiative, posing an interesting legal dilemma. In any case, by 29 June 1881, Leipzig lay under the provisions of §28.[87]

The immediate effects of the extension of the provisions to Leipzig once again included the expulsion of thirty-three Social Democrats which would eventually grow to 158 individuals by 1890,[88] not least of whom were Wilhelm Liebknecht and August Bebel, who left Leipzig on 2 July 1881, leaving behind a highly motivated organizational network to provide for the wives and children of those expelled,[89] as well as a public statement:

> The Saxon government has decided to declare a minor state of siege over Leipzig and its officials, 'because the public safety is under threat…' No-one in the area believes

[83] GStAPK IHA Rep 77 Tit 500 Nr 46C, p. 1.

[84] GStAPK IHA Rep 77 Tit 500 Nr 46C, p. 3.

[85] GStAPK IHA Rep 77 Tit 500 Nr 46C, pp. 5–18. See too Fritz Staude, *Der Kampf der Leipziger Sozialdemokratie in der Zeit des Sozialistengesetzes 1878–1890*. Unpublished PhD dissertation, Universität Leipzig, 1966, pp. 84–7.

[86] Madai, 15 Juni 1881, Polizei Präsidium Nr 4446 PJI, reproduced in Höhn, *Die vaterlandslosen Gesellen*, pp. 78–80. Madai was forced to admit in his next report that the 'zeal' of the party members had prevented this bankruptcy from occurring, even though Leipzig had been placed under the provisions of §28. Madai, 12 Januar 1882, Polizei Präsidium Nr 148 PJI Secret, reproduced in Höhn, *Die vaterlandslosen Gesellen*, pp. 95–6.

[87] Staude, *Der Kampf der Leipziger Sozialdemokratie*, pp. 86–8.

[88] Thümmler, *Sozialistengesetz §28*, p. 122. This was 18 per cent of those expelled under §28.

[89] Berndt, *Die auf Grund des Sozialistengesetzes zwischen 1881 und 1890 Ausgewiesenen aus Leipzig und Umgehend*, p. 92.

> in this threat to public safety, but that is considered to be beside the point. The mere claim that public safety is threatened is sufficient to banish a large number of individuals without trial from their wives and children, from home and hearth, and to expose them to misery. . . . This is a situation that would be impossible in any civilized country in the world.[90]

In the estimation of Leipzig's own officials, these expulsions had little effect on the Social Democratic Party's apparatus and affected many who were simply 'unimportant'. As an 1883 report to the *Reichstag* made clear, the large number of expulsions had simply not diminished the power of the party in Leipzig, but had in fact led to an increase in social democratic agitation.[91] Even worse in the eyes of the police authorities, many hitherto passive party members were mobilized and gravitated towards leadership positions, while 'because of the expulsions, many areas that had earlier been untouched now experienced social democratic activities'.[92]

This last sentiment, that the expulsion of socialists from large cities was in fact seeding other regions with highly committed party members and thereby actually exacerbating the problem, was shared by Puttkamer, who reported to Bismarck in July 1887 his concerns regarding the 'transplanting of social revolutionary propaganda in areas hitherto virtually or completely untouched by the social democratic movement'. Citing other situations (such as war and the unauthorized entry of Germans into the service of another country) in which the constitution allowed for the revocation of citizenship, Puttkamer suggested that the remedy for this might be to remove Social Democrats from Germany entirely. 'In principle,' he argued, 'it seems quite just that men who agitate for the violent overthrow of the state and the social order of their Fatherland have declared themselves to be no longer citizens and they should be treated accordingly.' Before proposing the new expatriation measures to the *Reichstag*, however, he wanted Bismarck's assent; warning him that they would in all likelihood meet stiff opposition there, even from the National Liberals.[93] For his part, Bismarck agreed with Puttkamer, arguing in tones reminiscent of the debate regarding the Jesuit 'threat' in 1872:

> the expulsion from the entire territory of the empire appears to me to be a logical result of the behaviour of men who as a matter of principle fail to recognize our political and social institutions and who view and proclaim the destruction of the present political order of the Fatherland as their political task. Against such endeavours the state can only effectively protect itself when it amputates those elements which are incompatible with its preconditions for life.[94]

Accordingly, in January 1888 an attempt was made to radicalize §28 and turn it into an expatriation law under a new paragraph (§22a), which would have seen any socialists expelled from a region operating under the provisions of a *kleiner*

[90] Bebel, *Aus meinem Leben Bd III*, pp. 179–82.
[91] GStAPK IHA Rep 77 Tit 500 Nr 46C, p. 49.
[92] St Archiv Dresden, Kreishauptmannschaft Leipzig, Nr 2473, pp. 263, 266, cited in Staude, *Der Kampf der Leipziger Sozialdemokratie*, p. 96.
[93] Puttkamer to Bismarck, 7 July 1887 in GStAPK IHA Rep 90A Nr 3776, pp. 4–8.
[94] Bismarck to Puttkamer, 20 July 1887 in GStAPK IHA Rep 90A Nr 3776, p. 9.

Belagerungszustand lose their citizenship and thereby become eligible for permanent expulsion from the entire German Empire.[95] Similarly leading to a loss of citizenship and expulsion from Germany under the proposed changes (§25a) would be attendance of any social democratic conference outside of Germany. With the last two party congresses having been held in Switzerland and Denmark, this represented a direct attack on the Social Democrats' ability to meet not merely inside Germany, but anywhere in the world. In the wake of the startling growth of the Social Democratic vote in the 1887 election, which Prussian Police President Madai calculated to have grown by 40 per cent since 1884 to 775,000 across the Empire,[96] it seemed to conservatives that the outright removal of socialists from Germany was the only sure way of controlling the spread of socialism within the empire.[97]

Echoing Madai's verdict in his *Reichstag* speech in favour of the proposed new measures, Carl Heinrich von Boetticher, admitted that since the advent of the Socialist Law, 'social democracy has not suffered any loss in its extent or strength'. The grounds for this, he reasoned, were that the expulsion measures were insufficiently harsh in their effects:

> All are in agreement that those expelled from a particular region through this regulation [§28] generally take up their agitation for social democratic arguments and principles again in their new place of residence, often more stridently, and they are thereby often transplanted to areas that until now had been little troubled or untouched by social democratic propaganda. These serious disadvantages with a mere restriction of residency, over which there has been an outcry from several directions recently, giving rise to particular concerns in rural districts, would at least partially be prevented, if the possibility was created that social democratic agitators might be eliminated from the territory of the German Empire entirely under certain conditions by having their citizenship revoked.[98]

As radical as the idea of revoking citizenship and expelling socialists was, it was nonetheless based on the legal precedent set by the 1874 Expatriation Law that had targeted supposedly 'criminal' clergy, in particular Jesuits, during the *Kulturkampf*.[99] There were, however, differences between the two, with the main one being that, whereas the denaturalization measures of the 1874 Expatriation Law remained a paper tiger, the proposed §22a changes to the *Sozialistengesetz* were clearly meant to augment an existing expulsions regime and in all probability

[95] For the drafting procedure, see in GStAPK IHA Rep 90A Nr 3776, pp. 49ff.

[96] Madai, 15 Nov 1887, Polizei Präsidium Nr 4507 PJI, reproduced in Höhn, *Die vaterlandslosen Gesellen*, p. 292. On these elections, see too Jonathon Sperber, *The Kaiser's Voters: Electors and Elections in Imperial Germany*, Cambridge University Press, Cambridge, 2005, pp. 42–5.

[97] Auer, *Nach zehn Jahren*, pp. 118–20.

[98] Carl Heinrich von Boetticher, 'Gesetz betreffend die Verlängerung der Gültigkeitsdauer des Gesetzes gegen die gemeingefährlichen Bestrebungen der Sozialdemokratie vom 21. Oktober 1878: Begründung', Aktenstuck Nr 71, *Verhandlungen des Reichstages* Bd 103, 1888, pp. 387–90.

[99] 'Gesetz, betreffend die Verhinderung der unbefugten Ausübung von Kirchenämtern. 4. Mai 1874', *Reichsgesetzblatt* 14, 1874, pp. 43–4. This law was also discussed in the *Reichstag* in 1888. See Georg Christian Wilhelm Meyer, *Verhandlungen des Reichstages* Bd 102, 37 Sitzung, 14 Februar 1888, p. 887.

would have resulted in the loss of citizenship and subsequent expulsion of German Social Democrats, most likely beginning with those who had already been subject to expulsion orders in Berlin, Hamburg, Leipzig, and Frankfurt.

For the *Reichstag*, which had supported the Socialist Law for a decade, a shift towards the denaturalization and expulsion of German citizens on the grounds of political difference was a step too far, as the *Reichstag* discussion of the measures made clear. The Centre Party's Windthorst, the only deputy to have anticipated the effects of §28 before it was introduced, made known his opposition not only to the proposed new measures, but to the existing expulsion measures under §28 by suggesting that the entire paragraph be deleted before any renewal of the Socialist Law be considered.[100] Even the National Liberals found themselves unable to support the drastic denaturalization measure and the proposed change never made it past the committee stage.[101] In the end, the existing law was renewed, albeit only until 1890 and not September 1893 as the chancellor had wished.

The debate over the denaturalization proposal was also used by Bebel to lambast the effects of §28 and to spell out the human costs of the expulsions.[102] Reflecting on his own experience since being expelled from Leipzig, Bebel argued that it had only driven him to use all of his energy to work in the interests of his party. He compared the motivations of those supporting the continuation of the *Belagerungszustand* to those behind France's St Bartholomew's Day Massacre, railing in particular against the conservatives whom he accused of shielding themselves behind religion in order to persecute those with whom they disagreed politically:

> You pious Christians move against those you persecute brutally, inhumanely and as such in an unchristian manner. That is a strange characteristic of the effects of Christianity, especially from its decided devotees, that they are always prepared to persecute. With the same pretext the St Bartholomew's Night, the dragonnades of the Cévennes, indeed all religious and political persecutions over the centuries have been justified. It has always been the case that one has sought to eliminate a minority, so that this minority cannot 'poison' the majority, and therefore brutal, inhumane, violent measures must be used against them. That is also your justification for §28. Congratulations![103]

According to the historiographical tradition of the German Democratic Republic, the capacity of the socialists to withstand the severity of the Socialist Law, and in particular its expulsion provisions under §28 was a central contributing factor to Bismarck's ultimate downfall.[104] This should not be entirely discounted,

[100] 'Abänderungs-Antrag zur zweiten Berathung des Entwurfs eines Gesetzes betreffend die Verlängerung der Gültigkeitsdauer des Gesetzes gegen die gemeingefährlichen Bestrebungen der Sozialdemokratie', Aktenstuck Nr 130, *Verhandlungen des Reichstages* Bd 103, 1888, p. 573.

[101] *Verhandlungen des Reichstages* Bd 102, 37 Sitzung, 14 Februar 1888, p. 887. Bismarck unsuccessfully attempted to revive and radicalize this expatriation bill shortly before his resignation in 1890. Pack, *Das parlamentarische Ringen*, p. 237.

[102] *Verhandlungen des Reichstages*, 37 Sitzung, 14 Februar 1888, pp. 887–9, 892–5.

[103] Bebel, *Verhandlungen des Reichstages*, 37 Sitzung, 14 Februar 1888, p. 895.

[104] See for example Horst Bartel, Wolfgang Schröder, and Gustav Seeber, *Das Sozialistengesetz 1878–1890. Illustrierte Geschichte des kampfes der Arbeiterklasse gegen das Ausnahmegesetz*, Dietz,

particularly given Bismarck's reaction to failing to secure his expatriation law. In fact, this line of argument is actually a modified version of Hans Delbrück's contemporaneous argument that Bismarck had wanted to precipitate a military clash with workers in 1890 just prior to and indeed even after his resignation, in order to expel Social Democrats from the empire and put an end to the parliamentary system that allowed them to rise to become the largest single party in Germany.[105] Having discussed the possibility of disenfranchising Social Democrats with Hohenlohe in December 1889,[106] in 1890 Bismarck used a ministerial meeting on 2 March as a sounding board for his musings on options for strengthening his capacity to expel Social Democrats and pondered how he might 'be freed of the *Reichstag*, should the elections continue to go poorly'.[107] By mid-March, Bismarck's intent was the subject of ministerial reports:

> The policy of the Imperial Chancellor is transparent. . . . After the Kaiser has vetoed the Socialist Law, the military bill should serve to detonate the Reichstag, to defeat the social policies of the Kaiser and to create a state of mass confusion in Germany, which Prince Bismarck requires, in order to be seen as indispensible.[108]

After his retirement, Bismarck confided to Karl Heinrich Kaemmel that he still considered the appropriate policy towards the Social Democrats to be to invoke the ancient Roman decree *aquae et igni interdictus*—a complete severance from the body politic.[109] According to Delbrück, the coming end of the *Sozialistengesetz* and the alarming rise in both the Social Democratic vote and the severity of strikes saw Bismarck move towards turning the state of exception extended piecemeal

Berlin, 1980, p. 312. 'Mit ihrem 12 jährigen Kampf gegen Bismarck und das Sozialistengesetz hatte die Arbeiterklasse entscheidend zur Krise des bonapartischen Herrschaftssystems und zum Sturz Bismarck beigetragen.'

[105] Hans Delbrück, 'Die Hohenlohe-Memoiren und Bismarcks Entlassung', *Preußische Jahrbücher*, 126, pp. 501–17; Hans Delbrück, 'Bismarcks letzte politische Idee', *Preußische Jahrbücher*, 147, 1912, pp. 1–12. See also Hans Delbrück, 'Fürst Bismarck und die "Hamburger Nachrichten"' *Preußische Jahrbücher*, 147, 1912, pp. 341–3.

[106] Friedrich Curtius (ed.), *Denkwürdigkeiten des Fürsten Chlodwig zu Hohenlohe-Schillingsfürst, Bd II*, Deutsche Verlags-Anstalt, Stuttgart, 1907, p. 462.

[107] 'Protokoll der Ministersitzung vom 2 März 1890' as reproduced in Egmont Zechlin, *Staatsstreichpläne Bismarcks und Wilhelm II 1890, 1894*, JG Cotta'sche Buchhandlung, Stuttgart, 1929, pp. 178–84.

[108] Bericht Marschalls, 15 März, as reproduced in Egmont Zechlin, *Staatsstreichpläne Bismarcks und Wilhelm II*, p. 70. See too Ernst Gagliardi, *Bismarcks Entlassung*, Verlag von JCB Mohr, Tübingen, 1927, pp. 223–5.

[109] *Grenzboten* 1907, I, p. 123, as cited in Hans Delbrück. 'Bismarcks letzte politische Idee', p. 5. Kaemmel further recalled that for Bismarck, 'the social question was a military one. 'In 1931, Karl Alexander von Müller also confidently wrote that 'man weiß, daß Bismarck 1890, unmittelbar vor seinem Sturz, erwogen hatte, noch einmal, wie am Anfang seiner Ministerzeit den Kampf für die Monarchie gegen die Parlamentsmehrheit aufzunehmen und, wenn nötig, bis zu einem blutigen Ende durchzuführen.' Karl Alexander von Müller, 'Der dritte deutsche Reichskanzler: Bemerkungen zu den "Denkwürdigkeiten der Reichskanzlerzeit" des Fürsten Chlodwig zu Hohenlohe-Schillingsfürst', *Sitzungsberichte der bayerischen Akademie der Wissenschaften Philosophisch-historische Abteilung*, 1931–32 (3), p. 16. See too Gagliardi, *Bismarcks Entlassung*, p. 182. Even Gagliardi, who was not convinced that Bismarck was planning a *Staatsstreich*, was confident that Bismarck was seeking, even militarily 'die politische Entrechtung der Sozialdemokratie', Gagliardi, *Bismarcks Entlassung*, pp. 181–99. This view is also shared by Werner Pöls, who saw Bismarck's embrace of a *coup d'etat* as a contingency plan, should he be unable to disenfranchise and expel socialists through parliamentary

under §28 into a blanket and perpetual basis for reshaping the political landscape of the empire, establishing the exception as a 'paradigm of government'.[110] That is to say, Bismarck appeared to be prepared to militarily destroy the *Rechtsstaat*, expel *en masse* those deemed to be *Reichsfeinde*, and end the liberal constitutional guarantees of the state towards its citizens, in order to save the nation as he understood it. As Delbrück reported at the time, the contours of a plan had emerged:

> How does this all fit together: the deliberate demise of the Socialist Law, and thereby spurring social democracy towards arrogance, the submission of a large military bill, revolts and pitched battles on the streets of Berlin, the announcement of an iron fisted Minister–President, dissolution of the Reichstag, a proclamation of the Kaiser and the princes that the Reich cannot continue as it has, replacement of the secret ballot with public voting and the disenfranchisement of the Social Democrats? This was the policy that the Kaiser, as he explained it to Prince Hohenlohe, had stymied on the grounds of conscience, and in the dispute over this, he relieved Prince Bismarck from his office.[111]

Delbrück's account verified what others before him, notably Ludwig Bamberger, had already argued in public—that Bismarck was prepared to overthrow the constitution in order to destroy the Social Democrats.[112] Certainly Herbert Bismarck was of the view that his father saw §28 as indispensable for an anticipated showdown with socialist workers in the summer of 1890 in Westphalia and Silesia.[113] It also concurs with other versions of the events, which highlighted Bismarck's intransigence on the question of the expulsion paragraph, the subsequent unravelling of his anti-socialist policies, his belief that allowing universal manhood suffrage was the biggest mistake of his career,[114] and his incapacity to accommodate both the *Reichstag*'s and the young new Kaiser's thinking on how to approach the social question.[115] In the same vein, the memoirs of Bismarck, in particular the 'suppressed' third volume published after World War One, make clear that anti-socialist measures were at the core of his dispute with Wilhelm II. According to Bismarck, the new Kaiser's unwise flirtation with socialism had left him no alternative but to resign rather than see the state founder on the rocks of revolution while he was at the helm. For his part, Wilhelm II maintained in his post-war memoirs that his determination to follow a consensual approach towards German labour had spared the German socialists from military attack by a bloodthirsty Bismarck, who had been enraged by the 1889 strikes and the 1890 election results, which had seen the Social Democrats emerge as the largest single party. The diary excerpts of Chancellor Hohenlohe, alongside Delbrück's accounts from

means. Werner Pöls, *Sozialistenfrage und Revolutionsfurcht in ihrem Zusammenhang mit den angeblichen Staatsreichplänen Bismarcks*, Matthiesen Verlag, Lübeck, 1960, esp. pp. 98–9.

[110] On this process in more recent times, see Agamben, *State of Exception*, pp. 1–3.

[111] Delbrück, ‚Bismarcks letzte politische Idee', pp. 8–9.

[112] Zechlin, *Staatsstreichpläne Bismarcks und Wilhelm II*, p. 3.

[113] Hans Rothfels, 'Zur Bismarck-Krise von 1890', *Historische Zeitschrift*, 123(2), 1921, pp. 269–73.

[114] Gagliardi, *Bismarcks Entlassung*, pp. 183–4.

[115] Rothfels, 'Zur Bismarck-Krise von 1890', pp. 267–96.

1906 and 1912, support the Kaiser's contention that Bismarck wished to pursue the socialists militarily when the parliamentary route failed to deliver a renewal of the *Sozialistegesetz* replete with an expatriation paragraph.[116] Even John Röhl's complex account of Bismarck's attempt to engineer the demise of the *Kartell*, and the subsequent role of supporters of the *Kartell* in Bismarck's fall, stresses the centrality of §28 of the anti-socialist legislation and Bismarck's more ambitious desire to rid Germany of its Social Democrats. Indeed Röhl expressly leaves open the suggestion that Bismarck was hoping to precipitate a crisis with the socialists that would lead to an overthrow of the constitutional rule that had delivered them so much power, that is, an anti-democratic *coup d'etat*.[117]

Crucially, however, the constitutional state proved itself to be more resilient than its often assumed master, Bismarck. Having exhausted the limits of the constitution and the patience of the *Reichstag*, and left without any further legal capacity to persecute and expel German Social Democrats, Bismarck sought to trigger a series of events that could potentially rid him of constitutional, political, and legal constraints and precipitate a state of exception in the strong, Schmittian sense of enabling meta-constitutional power to be exercised by a dictatorial Leviathan. To his chagrin, however, he found himself also unable to force the German Empire along a truly extra-constitutional path so as to destroy social democracy and thereby reassert the waning political strength of German conservatism. Instead, despite the constitutionally grounded and *Reichstag*-sanctioned law denying Social Democrats the political and residency rights of other Germans, social democracy continued to thrive in Germany courtesy of the networks of mutual self-help that sustained its adherents, and the threadbare but nonetheless resilient protection of the *Rechtsstaat* which prohibited the outright denaturalization and outright expulsion of Social Democrats.

Notwithstanding more than a decade of harassment, suppression, and legalized persecution that saw its publications censored out of existence, its electioneering severely hampered, and its members expelled from cities all over Germany, the Social Democratic Party emerged as the largest single party in the *Reichstag* in 1890. During this period, the use of the *kleiner Belagerungszustand* provisions of §28 had consistently been denounced by the Social Democrats, the Catholic Centre Party, and many Left Liberals. It had also become increasingly controversial and difficult to justify for the National Liberals, who had gravitated to a long-term solution to the short-term problem of the second assassination

[116] Otto von Bismarck, *The Kaiser vs. Bismarck: Suppressed Letters by the Kaiser and New Chapters from the Autobiography of the Iron Chancellor* (trans. Bernard Miall), Harper, New York, 1971, pp. 55–67, 78, 85–91, 94–105, 117, 120–1; Wilhelm II, *The Kaiser's Memoirs* (trans Thomas R. Ybarra), Harper, New York, 1922, pp. 1–4, 7–9, 11–12, 21–4, 28–9, 34–42; Wilhelm Schröder (ed.), *Das persönliche Regiment: Reden und sonstige öffentliche Äußerungen Wilhelms II*, Birtz, Munich, 1912, pp. 94–5, as cited on 'Bismarck's Fall from Power, 1890' <http://www.h-net.org/~german/gtext/kaiserreich/dismiss.html>. See also Pack, *Das parlamentarische Ringen*, p. 237.

[117] John C. G. Röhl, 'The Disintegration of the Kartell and the Politics of Bismarck's Fall from Power 1887–90', *The Historical Journal* 9(1), 1966, pp. 60–89, esp. p. 88, John C. G. Röhl, 'Staatsstreichplan oder Staatsstreichbereitschaft? Bismarcks Politik in der Entlassungskrise', *Historische Zeitschrift* 203(3), 1966, pp. 610–24, esp. pp. 618, 622.

attempt on the Kaiser. To its opponents, the Socialist Law had always been an *Ausnahmegesetz*; an exceptional law. To its most conservative proponents, however, the expulsions were seen as not merely necessary, but fundamentally weakened by the constitutional and parliamentary limitations which were imposed upon them. These constitutional limits restricted their capacity to radicalize and to generalize the targeted measures enabled by the declaration of the minor state of siege. By the late 1880s and certainly by 1890, these constitutional limitations were becoming increasingly intolerable to key conservatives such as Bismarck, who became increasingly willing to disenfranchise and expel German citizens; if needs be by bypassing the *Reichstag*, fomenting military confrontation and refounding the Reich on an absolutist basis. Bismarck's abandonment of the constitutional paradigm and his impatience with the structures of the parliamentary *Rechtsstaat* eventually saw him come into irreconcilable conflict with a young Kaiser anxious to solve the *Sozialfrage* in a lawful, constitutional fashion, and hoping to avoid a situation in which the first notable act of his rule would be to be led meekly by the Iron Chancellor towards the bloody military suppression or the forced expulsion from Germany of the thousands of supporters of the party of the poor.[118]

Like the Jesuit Law before it, the Socialist Law provided a means by which the *Reichstag* could enable the exile of German citizens in the absence of a penal colony apparatus and without contravening the legal and constitutional limits placed upon their power. It was voted into existence by parliamentary representatives responding to popular demands that something be done about the threat posed to the state by those adhering to politically unorthodox views. As both a democratic and constitutional measure, it was passed by a majority of *Reichstag* deputies, subject to parliamentary scrutiny, and necessitating periodic renewal by subsequently elected representatives. In managing the expulsion of Social Democrats from politically sensitive regions of the empire, however, the German government consistently remained scrupulous in its adherence to the norms of the *Rechtsstaat*.

[118] Röhl, 'The Disintegration of the Kartell'.

PART II

STATE-BASED EXPULSIONS

4

Poles and the Demographic Threat in Prussia, 1881–1887

On 13 November 1885, a widowed Prussian stepmother wrote a letter with the help of her parish priest and her mother, explaining the predicament of her seven-year-old stepdaughter, Marianna:

> My husband's child by his first wife is being reared by me. The little girl is seven years old and her name is Marianna. For the last week, two police have come daily for the child and want to take her with them, because she is supposed to be deported to Poland. Last Saturday the child fled in terror into the fields, fearing that the police might take her out of her school. She slept half the day behind a fence. The child then became sick with fear and exposure and lay in bed. Despite this, the police came and wanted to take her. The child was trembling with fear and pleaded with her mother, 'please mother, don't let me go, I don't want to go to Poland, I want to stay with you'.

The priest added:

> Yesterday the mother wrote to the *Landrat*, that the child should stay with her, that she undertook to look after her and to feed her, and yet the police came for the child again. I stress that the mother of the child was not Polish, but comes from here.[1]

By the time that the letter was read aloud in the Prussian House of Deputies, the little girl Marianna had already been deported to Polish Russia.

The 'orphan Marianna' was perhaps the most famous human face of the 1885/86 mass expulsions of non-German citizens from Prussia, with the Polish Party, the Centre Party, and the *Freisinnige* all repeatedly alluding to her plight. Alongside heavily pregnant expectant mothers, elderly widows, and veterans of the Franco-Prussian War, the orphan Marianna offered the opposition parties a symbol of the cold barbarity of an undifferentiated approach to expulsions which made no attempt to discern those whose conduct merited deportation and those simply expelled by virtue of their nationality. The emblematic orphan Marianna Tomaszak was, however, just one case in the mass expulsion of approximately 32,000 non-citizen Poles from Prussia in 1885–86; far and away the numerically largest mass expulsion to occur in Imperial Germany.[2]

[1] Letter, Marianna Tomaszek, Agnes Janik, 'Ortspfarrer' Jwaszkiewicz, 13 November 1885, as read aloud by Ludwik Jażdżewski, 30 January 1886 in *Stenographische Berichte über die Verhandlungen des Hauses der Abegeordneten*, 1886, Vol I, p. 254.

[2] The central monograph-length work on the expulsions is Helmut Neubach's *Die Ausweisungen von Polen und Juden aus Preussen 1885/86*. Otto Harrassowitz, Wiesbaden, 1967. The key Polish

Undertaken as a means of stabilizing the nationality question in the eastern borderlands, Prussia's targeting of Russian and Habsburg Poles betrayed a fear, marked partly by paranoia and partly by megalomania,[3] of boundary loss between *Deutschtum* and *Polentum*. This fear engendered Prussia's administrative (rather than legislative) attempt to instate frontier order via an expulsion policy.

This version of the tale of Marianna Tomaszak, which suggested that a rigid state policy of expulsions was destroying helpless families, was subsequently reframed by the Prussian Minister of the Interior, Robert von Puttkamer. Far from barbaric, he argued, these benevolent measures had been undertaken with the aim of ensuring the German nature of the Prussian east. Furthermore, the measures had the best interests of all at heart, including deported children such as Marianna. On the stated particulars of Marianna's case, Puttkamer demurred, arguing that the priest who had originally forwarded the letter did not know the real story. Drawing on a letter from *Landrat* von Scheele in Kempen, Puttkamer claimed that a so-called grandmother who had stepped forward to help look after Marianna was actually unknown to her and was only motivated by greed for the public funds that she might receive to support the child. As for the stepmother herself, a local magistrate had decided that she was in no financial position to be making rash promises about her capacity to raise Marianna. In Puttkamer's alternative explication of the case, instead of being ripped from the arms of a loving family, the child had been rescued from destitution and exploitation by benevolent Prussian authorities.[4] As a result of the expulsion orders, Puttkamer maintained, little Marianna had been returned safe and sound to her true relatives beyond the border.[5]

In discussions of Germany's attitude towards the Polish East in the late nineteenth century, particularly the 1880s, the imperial lens has often proved useful. As early as 1941, Richard Tims argued that the Polish East was a zone that was both national and colonial:

> What the western frontier has done for the imagination of Americans, what the sea lanes have meant to Britishers—that, or something corresponding to it, is what the *Ostmarken* or 'eastern borderlands' came to signify in recent times for countless Germans—the avenue of the future, the fluid, dynamic margin of national growth.[6]

language works (both dealing with Upper Silesia) remain Adam Galos, *Rugi pruskie na Górnym Śląsku (1885–1890)*, Sobótka IX, Wrocław, 1954; Andrzej Brożek, *Wsiedlenia Polakówz z Górnego Śląska przez Bismarcka (1885–1887)*, Wydawnictwo Śląsk, Katowice, 1963.

[3] Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest*, Routledge, New York, 1995, pp. 26–7.

[4] Puttkamer, 30th January 1886 in *Verhandlungen des Hauses der Abegeordneten*, 1886, Vol I, pp. 255–56.

[5] Puttkamer, 29 January 1886, in *Verhandlungen des Hauses der Abegeordneten*, 1886, Vol I, p. 204.

[6] Richard W. Tims, *Germanizing Prussian Poland: The H-K-T Society and the Struggle for the Eastern Marches in the German Empire, 1894–1919*, Columbia University Press, New York, 1941, p. 8.

GDR scholars such as Joachim Mai also regularly depicted Polish Prussia in terms of imperialism,[7] while more recent studies too have emphasized the colonial dimension of the German–Polish relationship in the Prussian east,[8] arguing that, as a continental multi-ethnic empire as well as an overseas empire, one of Germany's defining encounters with a colonial alterity came in the shape of rule in the Polish speaking territories.[9] As Philipp Ther (echoing William W. Hagen) has pointed out, Prussia and then Germany finessed the notion of itself as a *Kulturträger* in the Polish East.[10]

Of course, blanket characterizations of Prussia's *Ostpolitik* are complicated by the fact that it was by no means static. Amongst the numerous iterations of a Polish policy, there was Friedrich Wilhelm III's view that a multinational empire was unproblematic, which led to his 1815 policy allowing Polish expressions of national life in the public domain. In 1848/49, the cause of the Poles was first celebrated and then rejected by the liberal Frankfurt National Assembly.[11] So too there was the North German Confederation's 1867 reassurance that it would guarantee the cultural, religious, and language freedoms of Poles.[12] A decade later, however, overtly colonial measures were introduced in the hope that they would lead inexorably to the Poles' complete cultural and demographic assimilation.[13]

[7] Joachim Mai, *Die preußisch-deutsche Polenpolitik 1885–87: Eine Studie zur Herausbildung des Imperialismus in Deutschland*, Rütten & Loehning, Berlin, 1962.

[8] See for example Kristin Kopp, *Germany's Wild East: Constructing Poland as Colonial Space*, University of Michigan Press, Michigan, 2012; Kristin Kopp, 'Arguing the Case for a Colonial Poland', in Volker Max Langbehn and Mohammad Salama, *German Colonialism: Race, the Holocaust, and Postwar Germany*, Columbia University Press, New York, 2011; Lenny A. Ureña Valerio, 'An Empire of Scientific Experts: Polish Physicians and the Medicalization of the German Borderlands, 1880–1914', in Matthew P. Fitzpatrick, *Liberal Imperialism in Europe*, Palgrave, New York, 2012, pp. 167–92.

[9] For example see Edward Ross Dickinson's assertion that 'Prussian Poland is clearly the best case from which to argue for the imperial or even "colonial" nature of the German Empire…' in Edward Ross Dickinson, 'The German Empire: An Empire?' *History Workshop Journal* 66, 2008, p. 135. See too the collection of essays in Robert L. Nelson (ed.), *Germans, Poland and Colonial Expansion to the East, 1850 through the Present*, Palgrave, 2009.

[10] Philipp Ther, 'Imperial Instead of National History: Positioning Modern German History on the Map of Empires', in A. I. Miller and A. J. Rieber (eds), *Imperial Rule*, Central European University Press, Budapest, 2004, p. 58; William W. Hagen, 'The Partitions of Poland and the Crisis of the Old Regime in Prussia, 1772–1806', *Central European History*, 9(2), 1976, p. 118–22.

[11] Lewis Namier, *1848: The Revolution of the Intellectuals*, Oxford University Press, Oxford, 1992.

[12] GStAPK Rep 1176 2a Bd 8 Polnische Flüchtlinge, p. 152. Extrablatt zu Nr 5 des Amtsblatts der Kgl Regierung Posen 29 January 1867, ‚Einwohner polnischer Nationalität!…Auch in dem Norddeutschen Bunde werdet Ihr unbehelligt Polen bleiben, Eure Muttersprache reden, Eure Sitte üben, und die katholische Kirche wird sich nach wie vor derselben Freiheit und desselben Schutzes erfreuen, welche sie bisher in unserem preußischen Vaterlande genossen hat.'

[13] It goes without saying that these policy changes continued after the expulsions of the 1880s, as evinced for example by Caprivi's *Versöhnungspolitik* of the 1890s. This textured view has also been airbrushed in some accounts that have read the history of the Polish West Prussia, Posen, and Upper Silesia during the *Kaiserreich* as a prelude to the Nazi state. Adam Szelągowski, for example claimed that what was initially a set of Prussian '*Ausnahmemaßnahmen*' in the east gradually became the Nazi's way of dealing with the Polish. So too, the Nazi *Vernichtungsimperialismus* in Poland has been viewed by David Furber as stemming from the history of the Prussian east and the overseas colonial empire of Wilhelmine Germany. Silvia P. Forgus, 'German Nationality Policies in Poland: Bismarck and Hitler', *East European Quarterly* 20(1), 1986, pp. 107–18; Adam Szelągowski, 'Die

Understanding these shifts requires an understanding of the distinction between imperialism and colonialism.[14] Whereas imperialism hinged on the broad notion of *control* (whether formal or informal), central to colonialism was the more specific and totalizing concept of *displacement*; most obviously, displacement of the indigenous population from their territories, but also displacement of pre-existing ownership of the means of production, displacement of indigenous forms of culture, and the epistemic violence of displacing other ways of seeing the world. In Prussian Poland, the shift from protecting the cultural and linguistic expressions of Polish national life towards a policy of assimilation heralded the shift from an imperial approach to Polish subjects and a truly colonial approach which sought to displace the Polish nation culturally and demographically.

The chauvinistic assumptions guiding the policy of Polish assimilation was far from the sole preserve of the Conservatives, Free Conservatives, and the National Liberals. Whilst disagreement over the methods of imperial rule raged, the desired end result was not doubted by any, and was even conceded by the Social Democrat's Wilhelm Liebknecht, who, drawing upon Hegel and Darwin in equal measure, declared before the *Reichstag* in 1886, that the Germanization of the east could not be in jeopardy as Bismarck claimed it was, because the iron laws of historical progress dictated that those of a higher cultural level, namely the Germans, must inevitably advance at the expense of those on a lower cultural level, such as the Poles:

> Do you not recognise the proverb from world history and cultural history that where a culturally superior people borders a culturally inferior people, the culturally superior cannot be thrown back, but on the contrary will advance? And our Polish colleagues here will not take it as a slight if I assert that Germany as a whole is considerably superior to Poland in terms of cultural development.[15]

The Left Liberal Julius Möller too professed his agreement with these sentiments, counterposing the superior, civilized, and intellectual Germans with the raw manual labourers of the Russian side of the eastern border.[16] Unsurprisingly, these attacks were taken by Polish representatives as a slight, prompting the Polish Party deputy and Catholic theologian Ludwik Jażdżewski to remark:

> Gentlemen, Deputy Liebknecht presented us with the odious assertion that we are supposed to accept, that German culture is superior to Polish culture. I cannot agree with this assertion. I believe that Polish culture has so developed over the course of

Politik Preußens und das Anwachsen der Hegemonie Deutschlands in Mitteleuropa', in Lothar Dralle (ed.), *Preußen—Deutschland—Polen im Urteil polnischer Historiker*, Colloquium Verlag, Berlin, 1983, p. 41; David Furber, 'Near as Far in the Colonies: The Nazi Occupation of Poland', *International History Review*, 26(3), 2004, pp. 541–79. For a corrective to this, see Winson Chu, Jesse Kauffman, and Michael Meng, 'A Sonderweg through Eastern Europe? The Varieties of German Rule in Poland during the Two World Wars', *German History*, 31(3), 2013, pp. 318–44.

[14] Contra Robert L. Nelson, 'Colonialism in Europe? The Case Against Salt Water', in Nelson, *Germans, Poland and Colonial Expansion to the East*, p. 7, n. 2.

[15] W. Liebknecht, 15 January 1886, in *Verhandlung des Reichstages* 86, Berlin 1885/86, p. 537.

[16] Möller, 15 January 1886, in *Verhandlung des Reichstages* 86, Berlin 1885/86, pp. 543–4.

> the centuries and is so mature, that it can definitely compete with German culture and any other culture.[17]

The bedrock supposition of Germanization (as well as Polish resistance to it) was that nationality was not innate (much less biologically inescapable), but could be inscribed and reinscribed through political, social, and cultural pressure. Correspondingly, all German citizens were subjected to homogenizing political measures that suppressed linguistic, religious, and cultural differences in the vain hope of gradually eliminating the pointedly anti-German attributes and behaviours of Polish nationalists. Interestingly, the policy of Germanization in the east was aimed at securing precisely the type of population mixing that was viewed as lethal to German rule in colonial Africa.[18] Although frontier cultural hybridity and German/Polish intermarriage had the capacity to erode nationalist forms of identification,[19] the construction of a Polish-German *Mischvolk* was seen by liberal intellectuals such as Max Weber, Heinrich von Treitschke, and Theodor Mommsen as a crucial transitional step in the assimilatory process that would produce a politically homogeneous nation-state.[20]

Alongside the background of Prussia's assimilatory *Kolonialpolitik* in the Polish East, the economic pre-history of the expulsions also requires a brief explanation, in particular the erroneous assumption that an atavistic Junkerdom advocated the maintenance of vaguely neo-feudal conditions in the east. Apart from the fact that many supposedly 'pre-industrial elites' were heavy industry magnates,[21] Eastern agrarian estates were far from 'pre-industrial'. As Oliver Grant has argued, the Junker estate was 'modern and responsive in its use of technology, in its institutions and in its ability to evolve with changing circumstances'.[22] Prussian agribusiness was just as interested in maximizing profits and minimizing costs as the owners of Germany's mines, steel mills, and international shipping liners, even if their sector-specific interests drove them towards different policy priorities. Richard Evans' argument still holds, that 'it is more precise to talk of the Junkers as the landowning faction of the bourgeoisie by the late nineteenth

[17] Ludwik Jażdżewski, 15 January 1886 in *Verhandlung des Reichstages* 86, Berlin 1885/86, p. 541.

[18] See Chapter 8.

[19] On the concept of national indifference, see James E. Bjork, *Neither German nor Pole: Catholicism and National Indifference in a Central European Borderland*, University of Michigan, Ann Arbor, 2009; Tara Zahra, *Kidnapped Souls: National Indifference and the Battle for Children in the Bohemian Lands, 1900–1948*, Cornel University Press, Ithaca, 2008; Mark Tilse, *Transnationalism in the Prussian East: From National Conflict to Synthesis, 1871–1914*, Palgrave Macmillan, Basingstoke, 2011.

[20] Gary A. Abraham, 'Max Weber: Modernist Anti-Pluralism and the Polish Question', *New German Critique* 53(1), 1991, pp. 49–50.

[21] Toni Pierenkemper, 'Entrepreneurs in Heavy Industry: Upper Silesia and the Westphalian Ruhr Region, 1852–1913', *Business History Review* 53(1), 1979, pp. 65–78.

[22] Oliver Grant, ' "Few Better Farmers in Europe"?: Productivity, Change and Modernization in East Elbian Agriculture, 1870–1913', in G. Eley and James Retallack, *Wilhelminism and its Legacies, German Modernities, Imperialism, and the Meanings of Reform, 1890–1930*, Berghahn, Oxford, 2004, p. 63.

century than it is to base an entire historical interpretation on the existence of a mythical 'feudal aristocracy'.[23]

Far from advocates of the Romantic rural idyll, the business model of the Prussian agribusiness *homo oeconomicus*, which relied upon cheap non-German labour and consequently reasonably free and open borders with the Russian and Austro-Hungarian Empires, constituted one of the main threats to not only the bucolic liberal-nationalist dream of a land owning citizen yeomanry, but also to the demographic stability of the region. It was in no small part a result of the Prussian agribusiness and mining sectors seeking to minimize labour costs and conditions that Polish workers from outside Germany were encouraged to work and live in the German east and, to a lesser extent, the industrial Ruhr.[24] In the eyes of German nationalists not as heavily invested in cheap Polish workers, this highly mobile labour force was arriving in such numbers that, when added to Germany's own citizen Poles, they presented a cultural and demographic threat. Thus, the colonial policy of German nationalists seeking to gradually assimilate or displace Poles in the Prussian east collided with German agribusiness' need for a highly flexible and inexpensive workforce of migrant workers from the neighbouring Russian and Austro-Hungarian empires. It is against this backdrop that the mass expulsion of non-citizen Poles from Prussia should be seen.

The eventual move to expel Poles had been more than a decade in the making. Responding to local complaints, in 1872, Bismarck had warned of an unholy trinity of Polish nationalism, socialism, and ultramontanism in Posen, which he argued was destabilizing the province:

> It has emerged in *mutually confirming* reports:
>
> 1) That revolutionary movements in the province of Posen have gained a new impetus in recent times
> 2) The Polish press is overwhelmingly in the hands of Polish emigrés
> 3) After the expulsion of Polish revolutionaries from France after the Paris Commune a substantial number of disloyal foreigners have found sanctuary in the city of Posen and in the province's lowlands.
>
> I do not underestimate the difficulties that the current legal restraints on police authorities place on preventative measures against political subversion. It seems therefore even more important that the police authorities utilize the measures at their disposal to maintain peace and security. The Polish agitation currently enjoys a particularly fertile ground through its predisposition to attach itself to both ultramontane as well as social activism. On the grounds of my shared responsibility with

[23] Richard J. Evans, *Rethinking German History*, London, 1987, p. 110.

[24] Andrzej Brożek, *Napływ robotników spoza zaboru pruskiego na Górny Ślask w latach 1870–1914*, RSW Prasa, Katowice, 1958. On the (often enforced) integration of Poles into the Ruhr region, see for example Christoph Kleßmann, *Polnische Bergarbeiter im Ruhrgebiet, 1870–1945. Soziale Integration und nationale Subkultur einer Minderheit in der deutschen Industriegesellschaft*, Vandenhoeck & Ruprecht, Göttingen, 1978.

> you for any avertable damage to the safety of the state, I sincerely request of you that the police authorities of the province of Posen order the immediate expulsion of all politically active people from the city and province of Posen who do not have the constitutional right to reside there, that is to say those who can prove their status as German subjects.[25]

Just a few days later, and still some months prior to the introduction of the Jesuit Law, Bismarck strengthened this targeted expulsion plan by adding to it the request that the Prussian Interior Minister Friedrich zu Eulenburg order the police to escort to the Russian border and then expel Russo-Polish Jesuits who, he claimed, had been 'preaching in a manner that was strongly critical of the government'.[26] This was alongside stiffened local regulations that resolved to expel 'unauthorised Russian-Poles' who were adjudged to be burdensome (*lästig*).[27]

In 1873 Bismarck further warned the Ministers of the Interior of the various German states that foreign Poles were entering the empire and becoming naturalized in states other than Prussia, thereby ensuring that they could not be expelled from Germany. Thereafter, he argued, these Poles were moving to politically sensitive regions within Prussia and taking part in Polish nationalist agitation. As a result, Bismarck requested that no state authorities should naturalize a Pole 'unless they were absolutely convinced that they would remain apart from all political agitation'.[28]

For non-citizen resident Poles from the Russian and Austro-Hungarian empires, however, the 1880s saw a drastic escalation in their treatment. In what Robert Lewis Koehl termed 'the first state action of Prussia regarding a population problem',[29] approximately 32,000 non-citizens were expelled from Germany by Prussia, irrespective of personal criminality or political activity.[30] These Prussian expulsions of non-citizen Poles were intended to complement the simultaneous attempts to forcibly assimilate citizen Poles which were being led by prominent National Liberals at the federal level.[31] With the measures strictly targeting non-citizens, this radical demographic intervention was specifically designed to work within the limits imposed by German law and the constitution, which offered state authorities

[25] Bismarck to Eulenburg 19 January 1872, GStAPK Rep77 Tit 413 Nr 122, p. 13. Emphasis in the original.

[26] Bismarck to Eulenburg 5 February 1872, GStAPK Rep77 Tit 413 Nr 122, p. 20. Bismarck informed Eulenburg that if he had doubts about the wisdom of this course of action to let him know, so that he could have the Kaiser make the final decision.

[27] 25 January 1872 in GStAPK Rep77 Tit 413 Nr 122, p. 26.

[28] Bismarck to Staatsministerium des königlichen Hauses und des Aeußern, 17 March 1873, Bayerisches Hauptstaatsarchiv (BHStA) 92681 (unnumbered). This instruction was still being cited in April of 1881 as still valid by Bavarian Interior Ministry officials.

[29] Robert L. Koehl, 'Colonialism inside Germany: 1886–1918', *Journal of Modern History* 25(3), 1953, p. 256.

[30] The individual case notes for many of the expulsions are contained in GStAPK Rep 77 Tit 1176, Nr I, A–Z.

[31] G. Eley, *From Unification to Nazism*, Allen & Unwin, London, 1986, pp. 209–11. Eley usefully posited Bismarck as embracing existing National Liberal policy, rather than vice versa. This accords with Koehl's foregrounding of Johannes Miquel and Robert Zedlitz-Trützschler in the actual framing of the measures. See Koehl, 'Colonialism inside Germany', p. 261.

the power to expel burdensome foreigners without German citizenship; in this case Poles who had at some stage arrived from Habsburg Galicia or the Russian Empire. Not targeted were the several million Polish speaking Prussian subjects who were constitutionally exempt from deportation measures.

Exactly who was the target of this drastic state intervention has proved a matter of some controversy in the past. Nationalist historians of both Germany and Poland have obscured the matter by stressing the meekness or viciousness of the measures in line with their national affiliations.[32] Some have discussed the repressive measures in terms of their anti-Polish complexion, pointing to a long history of anti-Polish sentiment and action.[33] Others, most notably Jack Wertheimer, have concentrated on ostensibly anti-Semitic overtones in the measures for population management.[34] More fruitfully, perhaps, some, such as Jeff Bowersox, have sought answers in the intersection of anti-Catholic and anti-Polish measures that gradually moved from a preoccupation with confession towards nationality.[35] In fact, the fractured state of current historical analysis mirrors political and public opinion in the 1880s. Whereas the *Reichstag*'s Polish Party were outraged by what they saw as a concerted attack on the Polish nationality, the Catholic Centre protested against what they saw as the continuation of the *Kulturkampf*. With regard to anti-Semitism, at least one progressive liberal drew attention to the plight of expelled Jews, a perspective that did not win the support of German Jews.[36]

In so far as the Prussian government's own reasons for the expulsions might be trusted, Bismarck's *Reichstag* justification on its behalf explicitly argued that the measures were a necessary response to the 'Polonization' of the territory and people of the region.[37] More specifically, Bismarck, Puttkamer, and Gustav von Goßler all argued that the measures were to alleviate the strains on infrastructure, most notably Protestant, German language schools, created by the attendance of non-Protestant, Polish speaking non-Germans. This fear of a creeping Polonization had been the subject of ongoing public and scholarly debate, the

[32] Witold Molik, 'Die preußische Polenpolitik im 19. Jahrhundert und zu Beginn des 20. Jahrhunderts. Überlegungen zu Forschungsstand und –perspektiven', in Hans Henning Hahn and Peter Kunze, *Nationale Minderheiten und Staatliche Minderheitenpolitik in Deutschland im 19. Jahrhundert*, Akademie Verlag, Berlin, 1999, p. 35.

[33] See for example Richard Blanke's strict separation of the *Kulturkampf* from the persecution of the Poles in the late 1880s. Richard Blanke, 'Bismarck and the Prussian Polish Policies of 1886', *Journal of Modern History*, 45(2), 1973, p. 211. See also the Polish nationalist position of Lech Trzeciakowski, 'Die Polnische Frage in Ideologie und Politik der deutschen Liberalen vor 1870', *Jahrbuch für die Geschichte Mittel- und Ostdeutschlands* 35, 1986, pp. 53–71; Lech Trzeciakowski, 'The Prussian State and the Catholic Church in Prussian Poland 1871–1914', *Slavic Review*, 26(4), 1967, pp. 618–37. For the perspective of German Catholics in Bromberg and their sense of the primacy of nationality, see Roland Spickermann, 'Orphans of the Kulturkampf: German Catholics in Bromberg (Bydgoszcz) Regierungsbezirk, 1895–1910', *German Studies Review*, 23(3), 2000, pp. 507–31.

[34] Jack Wertheimer, *Unwelcome Strangers: East European Jews in Imperial Germany*, Oxford University Press, 1987, pp. 46–9.

[35] Jeff D. Bowersox, '"Loyal Sons of the Church and Fatherland"? Center–Polish Relations in Upper Silesia, 1871–1907', *Canadian Journal of History* 38, 2003, pp. 231–57.

[36] See the following chapter.

[37] Bismarck, *Verhandlungen des Reichstages*, 1 December 1885, p. 131.

terrain of which had been laid out by Friedrich Neumann's 1883 '*Germanisierung oder Polonisierung?*', an article that critiqued the demographic situation in Posen with reference to the threat posed by the Polish language and Catholicism.[38]

As the initial steps towards removing 'burdensome' and ostensibly seditious Poles during the 1870s suggests, this 'Polonization' was not a new problem in the 1880s. To the chagrin of Prussia's *Ministerpräsident* Bismarck, the German population in Posen (for example) had never been more than 40 per cent and the Polish population never fell below 60 per cent.[39] Yet the decision to use mass expulsions (as opposed to *ad hoc* deportations) to halt Polish immigration should be seen neither as the sole product of Bismarck's fertile imagination nor his personal xenophobia. The provincial officials of East Prussia had quietly expelled over 600 Polish immigrants from the Russian Empire between 1881 and 1883, while a petition from the border region of Hohensalza in May 1884 signed by artisans and workers (and supported by Bromberg *Regierungspräsident* Christoph von Tiedemann) demanded expulsion measures be applied to eastern immigrants who they saw as unwanted economic competition in their city. Crucially in this instance, Puttkamer had rejected the grassroots demands that Russo-Polish immigrants be expelled *en masse* as too extreme, advising the petitioners that expulsions could only be carried out against individuals whose personal conduct warranted it.[40]

In late 1884, the suggestion that mass expulsions be used against immigrant Poles came again from police and government authorities in West Prussia, with both the *Ober-Präsident* and *Polizei-Präsident* of West Prussia discussing expulsions in their correspondence with Robert von Puttkamer on 4 December 1884.[41] Puttkamer had also been informed by local authorities in October and December 1884 that the number of non-authorized resident alien Russian Poles ('*russische-polnische Überläufer*')[42] in Berlin and the border provinces was 30,165, of which 8,823 were men; nearly 6,000 of whom were agricultural workers, prompting him to reiterate the halt to naturalizing Russian Poles unless he had expressly consented to it.[43] In January 1885 Puttkamer sought to clarify how many Russian subjects had been expelled by local authorities since his October enquiries.[44] Further complaints from Posen about demographic pressures were reported in a letter from Goßler to Bismarck and Puttkamer on 12 February 1885, in which he cited new local reports of a large rise in the numbers of Russian Poles,

[38] Friedrich J. Neumann, 'Germanisierung oder Polonisierung?', *Jahrbücher für Nationalökonomie* 41 (7), 1883, pp. 457–63.

[39] Krzysztof Makowski, 'Polen, Deutsche, Juden und die preußische Politik im Großherzogtum Posen. Versuch einer neuen Sicht', in Hahn Kunze, *Nationale Minderheiten und staatliche Minderheitenpolitik*, pp. 51–2.

[40] Neubach, *Die Ausweisungen von Polen und Juden*, pp. 15–16.

[41] GStAPK Rep 77 Tit 1176 Nr 2a Bd V, pp. 53–61.

[42] GStAPK Rep 77 Tit 1176 Nr 2a Bd V, pp. 2–6, 20. This language was still being used in reports to Puttkamer in May 1888, December 1888, and September 1889. See GStAPK Rep 77 Tit 1176 Nr 2a, Bd XI, pp. 1–26, 103, 145.

[43] Joachim Mai, *Die Preußisch-deutsche Polenpolitik 1885/87*, p. 39.

[44] GStAPK. Rep 77, Tit 1176, Nr 2a, Bd V, pp. 16–19.

and advised that further measures be undertaken against Polish immigration. He informed Bismarck that there was pressure building from school authorities regarding a need for teachers for the children of newly-arrived Catholic Poles in hitherto almost exclusively Protestant-German areas. This Catholicizing of Prussian schools was a development which Goßler in particular saw as conflicting with the government's attempts to use schools to 'combat Polonising endeavours and the propaganda of the Catholic clergy'.[45]

With his ministers and local authorities in Posen, including the Bromberg *Regierungspräsident* Christoph von Tiedemann,[46] already canvassing new ways to address the Polish question, on 22 February 1885, Bismarck informed Puttkamer that he agreed in principle with the measures the Interior Minister had suggested, namely that authorities were not to naturalize any Russian subjects and that 'comprehensive deportations' of Russian citizens who were not merely travelling through Prussia should be undertaken on the grounds of 'public well-being and the inner peace and security of the state'.[47]

Citing fears of revolutionary Polish nationalists availing themselves of laxer German laws regarding nationalist agitation by moving into Posen and swelling the numbers of politically self-conscious Poles, Goßler, Bismarck, and Puttkamer agreed that the solution to the problem was expulsion measures. They further agreed that this plan should be formally placed in front of the Prussian *Landtag* for a decision, so that in the face of public opprobrium, the entire cabinet could share responsibility.[48] On 14 March, Bismarck noted that public and media pressure to go further on the Polish question was steadily mounting. The government-friendly Berlin *Post* and the nationalist liberal *Leipziger Tageblatt* in particular had reported on the issue in great detail, with the *Post* declaring:

> A flood of Polish immigrants is pouring into our eastern provinces, which increases in numbers as Poles feel increasingly uneasy in Russia. In this way the Polish element is perpetually strengthened. The Poles who have recently emigrated from Russia bring over with them a high degree of dissatisfaction and a yearning for the liberation of Poland from Russian thraldom and nurture here the spark that eternally gleams beneath the ashes. All of this raises the question, whether it is not necessary in the interests of self-preservation to do more to block the further spread of *Polentum* and of the Polish national idea, than has hitherto been done out of sensitivity for Polish national sentiment. What is required is not violence that alienates and embitters but rather assimilation. However more could well be done than is presently happening in the direction of transplanting German customs and culture to the eastern provinces. . . . The sooner this takes place, the quicker the danger of being overrun by the

[45] GStAPK. Rep 77, Tit 1176, Nr 2a, Bd V, pp. 25–32. In particular, Catholic priests had been preaching against Polish/German 'mixed' marriages. See too Mai, *Die Preußisch-deutsche Polenpolitik 1885/87*, pp. 39–40.

[46] For Tiedemann's later long *Denkschrift*, see GStAPK, HA1 Rep 77 Tit 413, Nr 35, pp. 3–33.

[47] GStAPK. Rep 77, Tit 1176, Nr 2a, Bd V, pp. 23–24, 100–1, See too Mai, *Die preußisch-deutsche Polenpolitik 1885/87*, p. 40.

[48] GStAPK Rep 77 Tit 1176 Nr 2a Bd V, pp. 88–9.

> Polish element and of profound turmoil and its unfortunate consequences can be avoided for all time.[49]

The first public hint of the imminent change in Prussia's population policy and its attitude to the residency of non-citizens came on 17 March, when Goßler commented that in the Marienwerder district of East Prussia the number of 'Russian-Polish' resident aliens was 10,774, of which only 3,392 were in paid employ, the rest of whom were presumably family dependants, including children who were being educated at Prussia's expense, despite the fact that the state bore no responsibility to do so. Somewhat offhandedly, Goßler suggested that this situation required more careful scrutiny and that perhaps a law such as that between Prussia and Holland might be required, which mandated that the dependants of seasonal workers be left behind in the home country to ensure that they did not become a burden on the Prussian education system. Quite carefully, Goßler declared that this would apply to the offspring of all foreign residents, irrespective of whether they were of Catholic or Protestant, Polish or German heritage.[50] By the end of the same month, however, Puttkamer had already authorized an initial round of expulsions including working men and their families, sparking an immediate reaction from West Prussian agribusiness, which complained that the expulsions threatened the viability of the province's agricultural sector, as 'ninety percent of those affected by the expulsion measures belong to the agricultural workers sector'.[51]

Local reactions to these initial expulsions amongst Germans were generally favourable, with the *Posener Zeitung* applauding the 'emergency measures' in late March, demanding that they be broadened to become truly mass expulsions:

> The unmistakable penetration of the Slavic element in the eastern border provinces has aroused the attention of governing circles.… This stream of immigration shall now be dammed through government measures and also the foreigners who have already immigrated shall be sent back, 'to target the excess of damage from elements belonging to a foreign nation'.… So far the government has taken no steps against the rise of the Slavic flood.… If the expulsions now took on greater dimensions, so would we view this as an act of necessary emergency defence and would quietly allow it to come to pass, even if the Polish press should thereby doubt our liberalism. The protection of our nationality is the first priority and this will be seriously threatened, should the evil not be averted.[52]

After further consultations with local officials about how best to expand the expulsion measures, Puttkamer's second ministerial edict announcing expulsions was issued on 26 July 1885. The proclamation offered reasons for its necessity and explicitly expanded the geographic scope of the measures, arguing that:

> The purpose of the action is the hindering and reversal of the continuous growth of the *Polish* element in our border provinces, insofar as it has already established

[49] *Post*, 11 March 1885, cited in a letter from Bismarck to Puttkamer 14 March in GStAPK. Rep 77, Tit 1176, Nr 2a, Bd V, pp. 100–2.

[50] Gustav von Goßler, 17 March 1885, *Stenographische Berichte über die Verhandlungen des Hauses der Abegeordneten*, 1885, Vol II, pp. 1093–5.

[51] Neubach, *Die Ausweisungen von Polen und Juden*, pp. 233–4.

[52] *Posener Zeitung*, 29 March, 1885 in GStAPK. Rep 77, Tit 1176, Nr 2a, Bd V, p. 102.

> itself on a scale that is dangerous to our political relations. The measures are aimed not merely at Russian subjects of Polish nationality, but are also to be applied to all foreign Polish speakers from other states, especially from Galicia.

Authorities were also reminded that men who had married Prussian women were not to be exempted, given that women took their husband's citizenship.[53]

In response to a question in the Prussian House of Deputies posed by the Polish and Centre Party deputies in early May 1885, Interior Minister Puttkamer offered his inital public justification of the expulsion since he had first mused aloud about the possibility of eastern border controls on 17 March 1885.[54] The question to the minister asked:

> 1) Are the reports true that the Poles living in East and West Prussia that are not citizens of the Prussian Federation have been deported, or are to leave our territory at once, even in the case that they have been in long term employment, own businesses or properties or have served in the German army?
>
> 2) On what grounds has this extraordinary measure been introduced, which is very economically damaging to both provinces?[55]

Elaborating on the question, Centre Party deputy Peter Spahn pointed to the enormous difference between the measures first mooted by Puttkamer in March, which were neither retroactive nor stopped the flow of agricultural workers, and the expulsions as they now operated. Spahn further argued that mass expulsions, apart from being morally dubious, were also illegal except in times of war. It was acceptable to expel foreign beggars and Gypsies, he continued, however to expel *en masse* Russian-Polish subjects who had lived in Prussia for decades appeared to be illegal. And although Protestants and Jews seem to have been caught up in the sweep as well, it was Catholics that had been most affected. This, he warned, would do nothing to win over Poles and Catholics to the Prussian state. For humanity's sake and the sake of the good name of Prussia, he concluded, the Minister should take seriously the question before the House.[56]

Puttkamer's justification for the expulsion policy went far beyond the original claims made in March of an increasing strain placed on Prussian schools brought about by the influx of immigrants. Defending the legality of the measures, Puttkamer stressed that they were a legitimate expression of the sovereign action of the state, which had a right to defend its political security, which in this instance meant 'the maintenance of the German presence and German culture'. Elaborating on precisely what it was that threatened Germans, Puttkamer asserted that it was the 'shift in the national mix in the eastern provinces and in particular the border zones of these eastern provinces of our Fatherland, to the disadvantage of the German element and to the advantage of the Polish element'.

[53] GStAPK Rep.77, Tit 1176, Nr 2a, Bd V, pp. 406–7. Emphasis in the quote is original.
[54] *Verhandlungen des Hauses der Abgeordneten*, 17 March 1885, pp. 1093–5.
[55] *Verhandlung des Hauses der Abgeordneten*, 6 May 1885, p. 1752.
[56] *Verhandlung des Hauses der Abgeordneten*, 6 May 1885, pp. 1752–6.

With regard to the claims of an attack on Catholics, he flatly declared that 'in relation to this there is no talk of confession', and although the Russian Poles may not have committed any particular crime, 'their simple existence in this region is a genuine threat to the security of our state'.[57]

Puttkamer then defended the German imperial civilizing mission in West Prussia, arguing that culture had originally been brought to the region by 'the German sword and German work' and that this was necessary once again. Linking civilization with economic development, he argued that the Poles had shown themselves to be incapable of civilizing themselves:

> Sadly, the 300 year long Polish interregnum tried everything in its power to stamp out every spark of this culture with extreme violence and it is now the Prussian government that is in the position to heal the terrible wounds that 300 years of Polish misrule inflicted upon the culture of these lands. . . . Gentlemen, when the great King took possession of West Prussia and the Netze district, what did he find there? A land sunken into deepest barbarism and poverty (*objections from Polish Party*), a land sunken into deepest barbarism and poverty, an aristocracy gone to seed, the trades suppressed, the middle classes subjugated, a general unavailability of credit, large stretches of land untilled; the whole place had the appearance of a desert.[58]

In conclusion, Puttkamer made no apologies for the measures, which he said may have been drastic and uncomfortable for some, but which were necessary to protect state security. They were being carried out 'without inhumanity' and would be continued irrespective of any opposition.[59]

The Centre Party's Ludwig von Windthorst, was not so easily dissuaded. If public morality and public opinion, swayed by the norms of Christian civilization, found that the expulsions did not conform to the 'ideas of civilized nations', Windthorst argued, then the Prussian minister should heed these sentiments. Asserting that the measures were illegal, Windthorst declared that although an absolutist system might have allowed Puttkamer to act as he saw fit, modern international legal norms surely forbade it. Windthorst argued further that the expulsions, apart from being illegal and against the norms of 'civilization', had a distinctly '*Kulturkampf*' flavour to them.[60]

In reply, the Conservative Dr Wehr objected to what he saw as the overly emotional response to expulsions, demanding that the matter be seen politically, 'with cold blooded level-headedness and reason'. Not only was the Polish element growing in the border provinces, this growth was, he claimed, a central factor in forcing Prussian citizens to emigrate, exacerbating the demographic imbalance. There was neither a confessional dimension—Jews too were deported—nor any inhumanity in the carrying out of the expulsions. It was simply a measure necessitated by the need to protect the German nature of Prussia.[61] Wehr's cold rationality

[57] Puttkamer, *Verhandlungen des Hauses der Abgeordneten*, 6 May 1885, pp. 1756–8.
[58] Puttkamer, *Verhandlungen des Hauses der Abgeordneten*, 6 May 1885, p. 1759.
[59] Puttkamer, *Verhandlungen des Hauses der Abgeordneten*, 6 May 1885, p. 1761.
[60] Windthorst, *Verhandlungen des Hauses der Abgeordneten*, 6 May 1885, pp. 1761–3.
[61] Wehr, *Verhandlungen des Hauses der Abgeordneten*, 6 May 1885, pp. 1765–7.

provoked a sharp rebuke from the Polish deputy Ignaz von Łyskowski, who railed against the discussion of the affair as if it were an 'academic disquisition'. As a Pole from the region, he argued that he understood the true scale of the suffering, which if witnessed by the assembled deputies would force them to avert their eyes in horror. The measures would not solve the underlying problem, he continued, which was that West Prussia was being emptied of its subjects through wholesale emigration to America. The Poles were not the problem; they were in fact the solution to the problem of acute labour shortages created by this mass emigration. Yet the Germans had systematically robbed the Poles of their language in public affairs, and had combatted their Catholicism to such a degree that it had ruined the piety and morals of the coming generation. 'This is the result of your *Kulturkampf* and your civilisation' he declared. 'You have ensured that the divide between Poles and Germans has widened.'[62]

If the first debate of the Prussian House of Deputies signalled the ethical and legal qualms that Poles and Catholics had regarding the expulsion measures, events in the *Reichstag* left the Prussian authorities in no doubt. With dissent mounting, Bismarck attempted to head off a looming debate of the issue on 1 December 1885 by reading a letter to the *Reichstag* from the Kaiser (written in his capacity as King of Prussia), who insisted upon the rights of Prussia to act in its own interests in accordance with the delineation of powers set out by the imperial constitution which clearly defined expulsions as an internal matter for state governments.[63] Bismarck warned the *Reichstag* against unconstitutional pressure on the King, and asked them to desist in furthering 'the interests and claims of foreigners'. Keen to spell out clearly the legality of Prussia's actions, he reminded the *Reichstag* that it had no constitutional right to meddle in Prussia's internal affairs. Beyond the constitutional issues, he also argued that Prussia required a free hand 'particularly in the border provinces to protect the existence and the development of the German nationality from the negative effects of foreign elements, namely from the currently occurring Polonisation of those of German origin'.[64]

This was not enough to halt the *Reichstag*'s opprobium, although further discussion of the matter had to wait until 15 January 1886. In the meantime, Bromberg's *Regierungs-Präsident* Christoph von Tiedemann submitted a sixty-page study to Berlin in early January 1886, not only endorsing the expulsions of resident aliens from Prussia but suggesting the radicalization of the measures, to include the expulsion of citizen Poles, who would be replaced by German colonists:

> *For the development of an effective offensive, the half measures of the punctilious bureaucracy are insufficient. It requires extraordinary measures and extraordinary sacrifices*. The mass expulsion (*Massen-Ausweisung*) of the *Russian-Polish border-crossers* would be one such extraordinary measure, the enduring effects of which would be indispensable. For something more drastic to occur to ensure the Germanising of Posen, then

[62] Ignaz von Łyskowski, *Verhandlungen des Hauses der Abgeordneten*, 6 May 1885, pp. 1767–8.
[63] Wilhelm I, letter to *Reichstag*, read by Bismarck 1 December 1885, *Verhandlungen des Reichstages*, p. 130.
[64] Bismarck 1 December 1885, *Verhandlungen des Reichstages*, p. 131.

> one should not contain oneself to the clearance of *foreign* Polish elements, one would also remove where possible the dangerous *domestic* Polish elements from the province and in a more effective way than hitherto replace them with *German* elements.[65]

Tiedemann further argued that 'it is to be treated as axiomatic that every Pole, whether openly or in secret, is more or less working towards Polonization'. For this reason, he argued that 'no Pole could be trusted as an official in the province'. He also demanded reforms to language usage and hiring practices in schools and the Catholic Church, as well as the breaking up of Polish estates.[66]

By the time that the *Reichstag* discussed the issue, the Polish Party, the Social Democrats, the *Freisinnige*, and the Centre Party had all offered draft motions of varying severity condemning the Prussian government for the mass expulsions. The text of the resolutions ranged in sharpness and illustrated the particular concerns of the opposition parties, with the Social Democrats urging the chancellor to reverse the mass expulsions of 'Russian and Austrian citizens' lest it lead to reprisals against Germans in the Russian and Habsburg Empires.[67] The Polish Party stressed the need for a supervening federal law in accordance with the powers available to the Reich under Article 4(1) of the constitution, which would allow the free residence of law-abiding foreign citizens. Their resolution also insisted that the Treaty of Vienna had guaranteed Poles the right to move and reside anywhere within the territories of the former Polish state.[68] The *Freisinnige* resolution stressed the human rights element of the measures, arguing that the expulsions were both inhumane and contrary to the material interests of Germans.[69] The Centre Party resolution, the mildest and the one finally accepted by the *Reichstag*, mentioned neither human rights, nor constitutional or treaty obligations, but simply argued that the expulsion of Russian and Austrian subjects in the current manner appear to be 'unjustified' and not in the interests of German citizens.[70] Mild as this resolution was, its acceptance by the *Reichstag* stung Bismarck, demonstrating not only that the Poles commanded some sympathy amongst the political class at the national level, but that there was an effective majority within the *Reichstag* that could and would act in concert to defeat the National Liberal/Conservative alliance if sufficiently motivated.

The *Reichstag* debate raged for two days. In opening the Polish deputy Ludwik Jażdżewski compared the fate of the Poles to that of the Huguenots who had found refuge in Prussia centuries earlier against persecution in France. While this example of Prussia's historic tolerance was justly celebrated, Russian and Austrian

[65] GStAPK Rep 84a Nr 4066 'Denkschrift betreffend einige Maßregeln zur Germanisierung der Provinz Posen'. Emphasis in the original.

[66] GStAPK Rep 84a Nr 4066 'Denkschrift betreffend einige Maßregeln zur Germanisierung der Provinz Posen'.

[67] Antrag Nr 46, 3 December 1885, *Verhandlung des Reichstages*, Vol 89, p. 139.

[68] Antrag Nr 72, 16 December 1885, *Verhandlung des Reichstages*, Vol 89, p. 254. The provisions of the treaty actually related to those with property in both states (Articles XVII and XVIII) and to the free passage of goods (Article XXIX).

[69] Antrag Nr 76, 8 January 1886, *Verhandlung des Reichstages*, Vol 89, p. 419.

[70] Antrag Nr 85, 13 January 1886, *Verhandlungen des Reichstages*, Vol 89, p. 506.

Poles, including Jews (who Jażdżewski argued were actually thoroughly Germanized and hostile to Polish nationalism), were being illegally expelled. Citing experts in jurisprudence, Jażdżewski claimed that international law allowed expulsions only on the grounds of a conviction or an immediate threat to public security or the state—neither of which applied in the case of the Poles, many of whom had lived for years in Prussia without causing a disturbance. The expulsions were also another development that directly contradicted the undertakings to the Polish people offered by Prussia's King Friedrich Wilhelm III on 9 May 1815 to the effect that the language, religion, and culture of the Poles would be protected. The attempt to protect this same culture, Jażdżewski continued, was now erroneously and inflammatorily labelled by Prussia's Minister of the Interior Puttkamer as 'Polish fanaticism'. Breaking with the Prussian tradition of tolerance, these new measures sought to persecute Poles because of their nationality and their Catholicism, irrespective of class, gender, or age. Marriages between Germans and Poles were being destroyed, war veterans were being unceremoniously expelled, along with the infirm, the heavily pregnant, widows, and their children. Such a state policy, he argued, showed just how bereft of Christianity and of civilization Prussia had become.[71]

The Social Democrat Wilhelm Liebknecht offered a similar interpretation of the expulsions, focusing on the inhumanity of the expulsions and decrying the barbarism that lay at the heart of them:

> You say: because the German element is being pushed back, we feel compelled to expel the foreigners that are entering the state; we want to protect our German nationality and to maintain the purity of our nationality—that is why we are deporting foreigners. And that, gentleman, you wish to do in the name of culture! Is not the essence of barbarism xenophobia? That one is closed to the foreign and hunts it from the land? This mass expulsion is an act of barbarism, enacted in the name of culture. You are not protecting German culture, no, you are demonstrating that in Germany barbarism still exists in certain places. . . . A principle of nationality that boils down to one nationality oppressing the other and hunts it from the country, gentlemen, that is a principle of barbarism; that is no principle of culture![72]

Instead of the principle of nationalism, Liebknecht suggested that if the principles of humanity and freedom were the watchwords of Germany, then Poles and other national minorities would gladly assimilate. Instead, Liebknecht continued, Prussia had chosen a path that had tarnished the reputation of Germany and would endanger the already precarious position of *Auslandsdeutsche*. On the question of legal competency, Liebknecht protested that, as the true representative body of Germany, the *Reichstag* had a legitimate role in deciding on measures that had grave foreign policy repercussions.[73]

As a self-declared liberal expert on eastern Jewry who had written on the topic for *Die Nation* and the *Allgemeine Zeitung des Judenthums*,[74] Dr Julius Möller

[71] Ludwik Jażdżewski, *Verhandlungen des Reichstages*, 15 January 1886, Vol 86, pp. 526–36.
[72] Wilhelm Liebknecht, *Verhandlungen des Reichstages*, 15 January 1886, Vol 86, p. 537.
[73] Wilhelm Liebknecht, *Verhandlungen des Reichstages*, 15 January 1886, Vol 86, pp. 536–40.
[74] Julius Möller, 'Die Polnischen Juden' *AZdJ*, 13 October 1885, pp. 675–9, 20 October 1885, pp. 693–5, 27 October 1885, pp. 709–11, 3 November 1885, pp. 725–6.

of the left liberal *Deutsche Freisinnige Partei* concentrated on the Jewish dimensions of the expulsions as well as the effects on commerce and trade with Russia and Austria. In his city of Königsberg, he maintained, the expulsions mainly affected liberal Jews who, despite being largely assimilated and German in manner and speech, were being expelled in far greater numbers than Catholic Poles, unsurprising given the atypical demography of the city in comparison to other regions in East and West Prussia.[75] The Conservative Otto von Helldorf used Möller's concern for the Jews of his city as a means to impugn his motives, declaring darkly that Möller spoke as a 'representative of the interests of Israelites', before moving on to condemn him for his emphasis on the economic impacts of the measures. Helldorf saw no point in entering into a debate over whether the measures were meant to combat Poles or Catholics, given that in his opinion 'the Catholic Church is the bearer of Polish interests'.[76]

Picking up on Puttkamer's comments in the Prussian House of Deputies that the very existence of Poles in Prussia was a threat to Prussian security, the leader of the Centre Party, Windthorst, opined that the question was one of 'the right to exist and the right to free movement in the world'.[77] He also portrayed the Centre Party's critique as an act of true patriotism, the patriotism of one able to try and stop the nation from making a mistake. The measures, he claimed, were unconstitutional, and perhaps even seemed anti-Semitic, but at base they were most certainly anti-Catholic. At a minimum, he declared, two-thirds of those deported were Catholic Poles. Irrespective of whether Catholic or Jewish Poles, however, did the government really believe that it could do whatever it liked to the Poles? And was it really patriotic to use such measures to oppress another nationality?[78]

On the following day the *Reichspartei*'s Paul von Reinbaben reiterating the government's point that, irrespective of the occasional inelegant handling of the measures, the expulsions were in the national interest, an important measure designed to stop the 'Polonization' of the German East. Even Jewish communities were behind the measures as being in the state's interests, he argued.[79] The *Freisinnige* Heinrich Rickert predictably disagreed, stating baldly that even if 30,000 foreign Poles were deported, this would not change the fact that half a million German Poles still lived in West Prussia, with even more in Posen. And these mass expulsion measures would do nothing to win these Poles over to the

[75] Julius Möller, *Verhandlungen des Reichstages*, 15 January 1886, Vol 86, p. 541. Helmut Neubach comments that this focus on the fate of Königsberg's Jews would have taken the 'wind out of the sails' of Jażdżewski and Windthorst, who preferred to focus on the Catholicism of the majority of victims, however Möller made it quite clear that his remarks were specific to his city. See Helmut Neubach, *Die Ausweisungen von Polen und Juden*, p. 97. After rising steadily for more than fifty years, the Jewish population in Königsberg peaked in 1880 at 3.6 per cent of the population. In 1885 it was down to 2.7 per cent, continuing to fall however after the expulsions, reaching 1.9 per cent in 1905. *Statistisches Jahrbuch für die Königliche Haupt- und Residenzstadt Königsberg i.Pr.*, I. Jahrgang, 1908, Königsberg, 1909, p. 2.

[76] Otto von Helldorf, *Verhandlungen des Reichstages*, 15 January 1886, Vol 86, p. 545–7.

[77] Ludwig von Windthorst, *Verhandlungen des Reichstages*, 15 January 1886, Vol 86, p. 549.

[78] Ludwig von Windthorst, *Verhandlungen des Reichstages*, 15 January 1886, Vol 86, pp. 550–2.

[79] Paul von Reinbaben, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, pp. 555–8.

German nation. Making explicit that which Windthorst had left unsaid, Rickert actually cited Puttkamer's assertion that the mere existence of the Poles in the east was the problem, and thundered, 'Never has a statesman ever uttered such a sentence!'[80] He then turned his gaze to the National Liberal *Kölnische Zeitung*, which had just applauded the expulsions of Poles, including a paragraph that presented the measures in baldly anti-Semitic terms:

> But there is another element that is brought by the Polish influx, which is an undesirable one. That is the Polish Jew, who begins by setting up in the eastern provinces and then progresses further west. This Jewish influx is not a happy one for Germany, nor for German Jewry.[81]

Rickert also took issue with the end of this article, which read 'Germany should belong to the Germans', declaring 'Such an impoverished, wretched politics in the state of Friedrich the Great'.[82] Yet Rickert also couched his left liberal critique in the language of nationalism and imperialism, stating that progressive liberals would support positive government measures that ensured the Germanization of the border provinces, and that they would 'remain loyal to the fight for German culture on German soil'. Intensification of efforts to use schools to inculcate nationalism as well as the inner colonization of the east through the parcelization of the eastern *latifundia* were the types of measures he suggested they might be willing to support, instead of mass expulsions.[83]

The Centre Party's Peter Spahn focused on the legal exceptionality of expulsions executed *en masse*, which he argued made them illegal under international law.[84] At this, the Conservative Wilhelm von Hammerstein accused the opposition parties of acting as the servants of foreign interests, a sentiment in line with National Liberal Heinrich von Marquardsen's doubly-gendered warning that voting against the interests of the Fatherland was akin to raising one's hand to one's own mother.[85] Hammerstein further argued that the claims of inhumanity were absurd; at a time when Americans were killing the Chinese on the streets, these police measures were inhumane? As for Möller's claim that the expulsions were aimed at 'liberal' Jewry, Hammerstein sniffily remarked that there was to his knowledge no conservative Jewry. When one wag heckled him with the name Bleichröder, he rushed to assure the *Reichstag* that Bleichröder was certainly not a member of his party. But the point, he continued, was that if the Centre Party saw the measures as anti-Catholic, whilst the left liberals saw them as anti-Semitic, then surely they were neither.[86]

[80] Heinrich Rickert, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, pp. 558–61.
[81] *Kölnische Zeitung*, cited by Heinrich Rickert, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, pp. 562–3.
[82] Heinrich Rickert, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, p. 563.
[83] Heinrich Rickert, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, p. 564.
[84] Peter Spahn, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, pp. 567–70.
[85] Heinrich von Marquardsen, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, p. 566.
[86] Wilhelm von Hammerstein, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, pp. 570–3.

The *Volkspartei* left liberal Friedrich von Payer criticized the nationalist cowardice that saw a mere 30,000 Poles as an existential threat to the German nation. Provocatively, he compared the Prussian expulsions to the Chinese policy of keeping all foreigners out of its territory and wondered aloud whether a further radicalization was required, and whether simply killing all foreigners as he said had happened in China, might be radical enough.[87]

In solidarity with a fellow marginalized nationality, representatives of the German Danes, Hanoverians, and Alsatians also spoke out in protest, with Jens Peter Junggreen complaining of the 'cruel' ejection of many thousands of innocent people from their homes, an event comparable to the expulsion of the Moors from Spain, with the only difference being that religious fanaticism had now been replaced by nationalist fanaticism. A government at the end of the nineteenth century which showed no more humanity than one of the sixteenth century should be judged all the harsher, he opined, given the intervening moral progress. The Danes too, he reminded the *Reichstag*, had suffered expulsions and there too the consequences had often been financial ruin.[88] The Hanoverian Heinrich Langwerth von Simmern similarly warned of the 'cult of the nationality principle' which was little more than a type of exclusivist religion that sought to destroy anything that opposes it under the guise of law. Instead of chauvinistic nationalism, Langwerth recommended a (somewhat idealized) portrait of the historic multinational statehood of the 'old German Empire', where all nationalities had lived in peace and harmony. He also sought to contextualize the movement of Poles into Germany as part of a broader westward migration that had seen Germans emigrate to America and Poles move into Germany. 'It is,' he stated, 'a law of nature that the lower classes from the east emigrate towards the developed lands of the west'.[89] For his part, Dr Ignatius Simonis of the Alsace-Lorraine Protest Party also related how, as a minority that had been 'ruthlessly attacked from above', the Alsatians understood only too well the need for the government to use its power to protect the weak, rather than to oppress them.[90]

The National Liberal Friedrich Böttcher presented himself as not unsympathetic to the hardships caused by the expulsions, but saw them as a necessary purgative. Remarkably, he sought to make a special case for the mass expulsions as an extraordinary measure unrepresentative of Germany's broader commitment to the rights of foreigners, conceding that what was occurring was indicative of an exceptional law, in the sense that it parenthesized a segment of the population from the usual legal considerations:

> I will not get into the discussion of international law that we've heard enough about over the past two days. However I will give you a moment to consider this. I gladly concede to you, that this type of mass expulsion is indeed not within the

[87] Friedrich von Payer, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, p. 575.
[88] Jens Peter Junggreen, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, pp. 577–8.
[89] Heinrich Langwerth von Simmern, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, pp. 578–80.
[90] Ignatius Simonis, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, pp. 585–6.

> framework of modern international law—but consider that this situation is not concerned with the usual treatment of foreigners in general, rather it is concerned with a very specific instance, with the Polish question. (*Interjection: The French in Alsace!*)—No, the French question or any other question arising from our other borders could not be compared to this specific Polish question. (*Interjection: why not?*)—Why not?! On the simple grounds that we stand confronted by a nation that has been torn asunder, that finally has been brought through its history to this lamentable end, and yet will nevertheless eternally seek to raise itself back to national independence (*laughter and commotion on the Left*), and as such represents a danger. And because this danger is present, the Prussian government has a duty, a national duty, to ensure that this element does not run rampant in such a way that, if a Polish uprising takes place, it would be all too easy to lose German territory than if we had halted this inundation of Polish elements. (*Very true! Right*). In my opinion that is the higher national-political meaning of this question.[91]

This surprising invocation of a state of legal exception led Windthorst to ask rhetorically whether 'our Polish brothers stand outside of international law? . . . The matter is clear: You are not permitted to do that which you want to do using illegal methods.' He then went further, drawing a well understood North American colonial comparison:

> The methods we see and hear of being used here against the Poles, are reminiscent of the war of extermination against the Indians (*very true! Left*) and gentlemen, that was presented here by a National Liberal—I repeat liberal!—(*great hilarity*) as legitimate. Dr Böttcher opined that he was sorry for certain aspects, however here it was a case of *c'est la guerre*.[92]

Ludwig Bamberger of the left liberal *Freisinnige* spoke in similar terms of his amazement that such 'exceptional measures, unheard of in the civilised world are being used'. He urged the nation to reject the violent chauvinism of the North American 'rowdies' and the oppression of peaceful minorities and demonstrate instead that the concepts of nationalism and humanity and not nationalism and brutality were coextensive.[93] The Social Democrat Paul Singer also elaborated on the astonishment of other countries that a nation such as Germany 'ostensibly marching at the forefront of civilisation' was allowing measures 'the brutality and barbarism of which belong in the Middle Ages'. As a Jew, he also said that he felt compelled to condemn Hammerstein for his attempts to misconstrue the events as being anti-Semitic in nature. Rather, the expulsions were part of a purgative trend in Prussian politics—not only Poles, but also Danes and socialists had fallen victim to expulsion orders.[94]

[91] Friedrich Böttcher, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, p. 581.

[92] Windthorst, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, pp. 583–5. On the importance of the example of US colonialism in German imperial policy, see Jens-Uwe Guettel, *German Expansionism, Imperial Liberalism, and the United States, 1776–1945*, Cambridge University Press, New York, 2012.

[93] Ludwig Bamberger, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, pp. 586–91.

[94] Paul Singer, *Verhandlungen des Reichstages*, 16 January 1886, Vol 86, pp. 593–6.

The vote in the *Reichstag* led to the three most critical resolutions—those of the SPD, the *Freisinnige*, and the Polish Party were all rejected, whilst the mildest of the four, that of the Centre was passed. Despite the fact that the resolution represented the mildest of the four possible forms of rebuke by the *Reichstag* to Prussia, Bismarck and the ruling Conservative/National Liberal parties were stunned that the opposition parties had banded together in order to create a majority that clearly demonstrated the government's tenuous hold on power.[95] 'Germany has cause to mourn the 15th and 16th of January 1886', declared the conservative *Neueste Mittheilungen*; 'what had hitherto been seen as impossible, that the German *Reichstag* would act in favour of foreign Poles against a government serving the national interests, has happened.'[96] Similarly sympathetic to Bismarck, *Kladderadatsch* offered a poem in the mock heroic style, satirizing the leaders of the *Reichstag* opposition for their presumptions:

> Tales of yore relate the battles of daring old heroes
> But also in our own time there is no shortage of those
> Behold—Like a brave army marching into the battle's fire
> To shield the rights of Poles and the honour of our Empire
> The chancellor's outrageous deeds have harmed the Empire's weal
> They would not take that lying down, our heroes so genteel
> With sword and cudgel they engaged in the bloody battle fray
> A garish and hybrid band like Sir John Falstaff's company
> Jazdzewski carried the banner, which was lifted on the battle ground
> By the mighty fist of Liebknecht rich in courage and knowledge sound
> Behind him came the old warhouse steered along through the mire
> By the ancient hero from Meppen and Spahn, his very loyal squire.
> Bamberger, Rickert, Möller, they were all there too
> Letting out a threatening echo amidst the battle's din and hue.
> And those that saw the three of them in the thick of all the strife
> Could not believe that such an alliance had somehow been called to life.
> Who else numbered among them? From beautiful Swabia came forth
> A certain Mr Payer, along with Junggreen from shores up north.
> From Alsace came Mr Simonis and with him to hold the line
> Langwerth Baron from Simmer, worthy hero from the Leine.
> It was against the chancellor that this troupe rose their battle cries
> With the battle lust of heroes, they stood as the fastest of allies.
> There was however a single point on which they could not agree
> But it should be said that this small point was but a trifling
> Mr Windthorst cried 'My friends listen carefully to what I have to say,
> It's not of our trade and commerce, that we speak about today.

[95] Richard Blanke asserts that Bismarck's discomfort was due to foreign policy concerns about his apparent domestic weakness, however there is no reason why external appearances should have counted more than the domestic political reality that he was unable to marshal a dependable majority in the *Reichstag*, as Bismarck himself hinted in the House of Deputies. See Blanke, *Prussian Poland in the German Empire*, p. 55; Bismarck, *Verhandlungen des Hauses der Abgeordneten*, 28 January 1886, p. 174.

[96] 'Die Ausweisungsdebatte im Reichstage', *Neueste Mittheilungen*, 19 January 1886, p. 1 and 21 January 1886, p. 1.

For believe you me, it can be seen amongst the expellees there
Are very few kaftan wearers with suspicious beards and hair.
Whomsoever understands the matter in the precisely the right way
Can see a new piece of *Kulturkampf* is getting underway.
Fully twenty thousand people; men, women, old, young in the mix
They've all been thrown out and just because they're all good Catholics.'
Now this Herr Möller from Königsberg could simply not endure
He hurried to correct his companions and prune down their figures.
'Two thousand I have seen myself,' he loudly began to tell,
'And they weren't Catholics, they were instead children of Israel!'
On this matter the two of them had a lot of space between
But in every other detail there was the strongest unity.
What the government was trying to do was not asked amidst the fray
But both were united in the belief that it was heading in the wrong way.
What a pity the chancellor had stayed away from their disputations then
He could have learnt so much from so many clever gentlemen
Sage advice on running the state was given without caveats
From the oh so experienced Liebknecht and many other diplomats.
He didn't want to hear it, as strong as iron, above the mire
That was his mind, even though he may jeopardise our empire.
But do not despair, oh Germany, oh no no nevermore,
The brave band that's in the Reichstag fights for your weal and your honour.[97]

[97] 'Die Helden des Reichstags', *Kladderadatsch*, 24 January 1886, 'Viel alte Mären melden von kühner Recken Streit/Doch fehlt's an gutenHelden auch nicht in unsrer Zeit. / Hei, wie zu Kampfesstürmen auszog ein tapfres Heer, Der Polen Recht zu schirmen sowie des Deutschen Reiches Ehr'! / Des Reiches Wohl gefährdert des Kanzlers frevelnd Thun/Das ließ die edlen helden daheim nicht länger ruhn; / Mit Schwert und Kolben zogen zum blut'gen kampfe sie / Ein bunt gemischter Hause, wie Sir John Falstaffs Companie / Jazdzewski trug das Banner; es hob zum ersten Streich/ Die kräft'ge Faust Herr Liebknecht, an Muth und Wissen reich; / Und hinter ihnen lenkte den Klepper in die Bahn / Der greise Held von Meppen mit seinem treuen Knappen Spahn. / Bamberger, Rickert, Möller, sie waren auch dabei / Und ließen drohend schallen ihr lautes Kampfgeschrei; / Gar mancher, der die Dreie im Schlachtgewühl geschaut/Mit solchen Bundsgenossen, hat seinen Augen nicht getraut. / Wer nennt die Tapfern alle? Vom schönen Schwabenland / Erschienen war Herr Payer, Junggreen vom nord'schen Strand, / Vom Elsaß Herr Simonis; es machte den Beschluß / Langwerth Freiherr von Simmern, der biedre Held vom Leinefluß. / Es lief mit lautem Schlachtruf die Schar den Kanzler an, / Die Kampfgemuthen Recken, sie standen wie Ein Mann; / In einem Punkte haben sie freilich nicht entzweit, / Doch will man's recht erwägen, so war's nur eine Kleinigkeit. / Herr Windthorst rief: "Ihr freunde, vernehmt wohl, was ich sage: / Es kommt hier nicht der Handel und der Verkehr in Frage; / Man sah—ihr könnt mir's glauben—in der Vertriebnen Schar / Nur wen'ge Kaftanträger mit höchst verdächt'gem Bart und Haar. / Wer es versteht, den Dingen recht auf den Grund zu gehn, / Eine neues Stück Culturkampf kann hier allein er seyn; / Wohl zwanzigtausend Menschen, Mann Weib, Greis, Jüngling, Kind, / Sie wurden ausgetrieben nur weil sie gut katholisch sind!" / Dies konnte nur Herr Möller von Königsberg nicht leiden, / Er eilte, den Collegen die Ziffer zu beschneiden:/ "Zweitausend hab' ich selber gesehen, rief er hell, / Nicht Katholiken waren's, es waren Kinder Israel!" / In dieser Frage trennten sich beide ziemlich weit, / In allen andern herrschte die schönste Einigkeit. / Was die Regierung wolle, wird nicht gefragt dabei, / Doch einig waren beide, daß ganz sie auf dem Holzweg sei. / Wie schade daß der Kanzler dem Streite ganz blieb fern! / Viel hätt' er lernen können von all den klugen Herrn. / Für seines Amtes Führung gab ihm gar weisen Rath / Der vielerfahrene Liebknecht und mancher andre Diplomat. / Er hat nicht hören wollen. Dem starren Eisen gleich / Ist ja sein Sinn, und noch bringt er Gefahr dem Reich. / Doch sollst du drum verzagen, o Deutschland, nimmermehr; / Die tapfre Schar im Reichstag kämpft für dein Wohl und deine Ehr'. See also 'Nur Geduld!' *Kladderadatsch* 14 February 1886.

By contrast, *Kladderadatsch*'s front page poem of the following week was a strangely humourless, nationalist piece that warned of the 'secretly growing power of the enemy' in the east threatening Germany's eastern achievements which Germany needed to face and defeat.[98] The same edition also illustrated the comparative power of Windthorst within the *Reichstag* and the *Landtag*, depicted as a giant within the former and a dwarf in the latter.[99]

With the expulsions ruled by the *Bundesrat* to be constitutionally a concern of the states rather than the national government,[100] the ruling coalition was able to continue to use the Prussian *Landtag* rather than a hostile *Reichstag* to legitimize its deportation policy and to continue to prosecute its Germanization policy in the east. For the *Neueste Mittheilungen* this amounted to 'a protest of the House of Deputies against the Polish sentiments of the Reichstag'.[101] Beginning this 'protest' was the Kaiser, who, in a final paragraph tacked onto his speech opening the Prussian *Landtag* on 14 January 1886, mandated Prussian government action against the Poles in the east:

> The pushing out of the German element by the Polish in several Eastern provinces presents the government with the duty to introduce measures which will secure the continued existence and development of the German population.[102]

The expulsions came to be debated in the Prussian House of Deputies once again during January and February of 1886, initially as a result of a resolution from the *Freikonservativ* Heinrich von Achenbach pledging unspecified support for anti-Polish measures in the east. From a discussion of the expulsions themselves, the debates moved seamlessly to the Prussian government's new plans for a redistribution of Polish land to German settlers and measures affecting schooling and the provision of medical staff to the east. Despite the debates looking to a set of future measures, the debate was peculiarly historical in tone, with references to 1772, 1815, 1848, and 1871 littering the speeches of the deputies on both sides.

The preliminary address by the leader of the Conservative Party Wilhelm von Rauchhaupt demonstrated the extent to which the condemnation of the *Reichstag* had made an impression, with the cleft between the chancellor's and the *Reichstag*'s views highlighted, reference made to the 'clear provocation' of the *Reichstag*, and in particular to Windthorst and Bamberger, who were singled out for admonition. The expulsions were defended as necessary given the growing 'isolation' and the 'swamping' of the Germans in the east that was a result of Polish irredentism. The cause of the measures, Rauchhaupt insisted, were the actions of the Poles themselves, not the Prussian government, which was ensuring that the expulsions

[98] 'Deutschland im Osten', *Kladderadatsch* 7 February 1886.

[99] 'Vergleichender Parlamentarismus', *Kladderadatsch* 7 February 1886 (Beiblatt).

[100] On the *Bundesrat*'s decision to deny the *Reichstag* resolution on the grounds of the rights of the states, see *Neueste Mittheilungen*, 26 January 1886, p. 4.

[101] 'Der Protest des Abgeordnetenhauses gegen die Polenkundgebung im Reichstag', *Neueste Mittheilungen*, 28 January 1886, p. 1.

[102] Kaiser Wilhelm, *Verhandlungen des Hauses der Abgeordneten*, 14 January 1886, Vol I, p. 3.

were carried out in a mild and temperate fashion, and that positive measures in the areas of schooling and inner colonization were accompanying them.[103]

Following Rauchhaupt was Bismarck, who delivered a famous two-hour speech on the expulsions and other Germanization measures dubbed by the government press as a 'monument of true German sentiment' by the 'champion of Germandom'.[104] Bismarck offered a somewhat jaundiced rendition of the history of the Prussian east since the Treaty of Vienna, in which he argued that King Friedrich Wilhelm III's original undertakings to the Poles were not eternal laws, but rather idealistic *desiderata* that in the event could not be fulfilled because of the irredentism and rebelliousness of the Poles themselves, most notably between 1830 and 1848. As such, far from being a guide to state policy more than half a century later, claims based on the 1815 proclamation were not 'worth a thing'.[105] Ever since European hegemony had been achieved by Germany in 1871, the 'struggle for existence' between the two nations' had continued. The absence of open conflict did not mean the cessation of hostilities, because for the Poles, 'times of quiet are not times of reconciliation and peace'.[106]

Warding off claims that the expulsions were indicative of a new *Kulturkampf*, Bismarck also reminded deputies that many of the expellees were Jews and not Catholics. If Polish Jews had been exempt, he reasoned, that would have definitively proven that the measures were confessional in their nature, when in fact they were aimed at the Polish nationality. Put simply, Bismarck said, 'We were convinced that we had enough Poles of our own, and that we should reduce the number of Polish agitators amongst the foreigners we have here. . . . The expulsions were a political measure: we wanted to be rid of foreign Poles, because we have enough of our own.'[107] Continuing on the note of population management, in discussing the new complementary measure of inner colonization, Bismarck committed not only to settling German farmers, but also strayed into biopolitical territory by arguing that the government would also ensure that these colonists would marry German women, not Polish ones.[108]

Despite the admiring applause that Bismarck's address drew from the Conservatives and National Liberals, the Centre Party's Windthorst took issue with Bismarck's comments about the 1815 proclamation of King Friedrich Wilhelm III. Windthorst professed himself to be amazed that Bismarck would declare the undertakings of a Prussian king to be worthless. Apart from that, under Paragraph 4 of the constitution, all Prussian citizens were equal before the law, and any laws that specifically disadvantage a group of people because of their nationality could not be seen as conforming to the dictates of the constitution. As

[103] Wilhelm von Rauchhaupt, *Verhandlungen des Hauses der Abgeordneten*, 28 January 1886, pp. 159–63.
[104] *Neueste Mittheilungen*, 30 January 1886, p. 1.
[105] Bismarck, *Verhandlungen des Hauses der Abgeordneten*, 28 January 1886, p. 164. 'Ich gebe meinestheils keinen Pfifferling auf irgendeine Berufung auf die damaligen Proklamationen.'
[106] Bismarck, *Verhandlungen des Hauses der Abgeordneten*, 28 January 1886, p. 170.
[107] Bismarck, *Verhandlungen des Hauses der Abgeordneten*, 28 January 1886, pp. 172–3.
[108] Bismarck, *Verhandlungen des Hauses der Abgeordneten*, 28 January 1886, pp. 173–4.

such, the Polish measures amounted to 'the proclamation of an *Ausnahmezustand*, which cannot be tolerated under any circumstances.' Indeed the expropriation of Polish estates for the new inner colonization measures smacked to Windthorst of socialism. Warning the government against a biopolitical turn in their politics, he argued that the government had no role to play in the manipulation and correction of unfavourable demographics. Equally reprehensible was the fact that the expulsion policy was effectively a retrospective measure, punishing people for violating a government policy that did not exist prior to 1885—an application of government power that was both lacking in Christian morality and intolerable under international law.[109] Rejecting this critique, the Free Conservative Hugo Wehr professed to being outraged by the resolution of the *Reichstag* which, he insisted, had provoked Prussia into enacting even more stringent measures. Wehr also displayed the colonizer's fears of an inverted colonization, claiming that 'the Poles have played a very clever game here, they have complained here of oppression and violation, while in the provinces precisely the opposite is occurring—there they are oppressing the Germans'. Through the creation of closed communities of Polish shops, Polish doctors, Polish lawyers, Polish priests, and Polish tradesmen, Wehr argued, the German colonizers 'found themselves colonized'. In this manner, 'the power and honour of the nation is being risked'.[110]

The following day, the Polish deputy and later Catholic Archbishop Dr Florian von Stablewski spoke in florid terms about the extra-legal nature of Bismarck's speech, which to him illustrated that 'we now stand at a new historical turning point, in which naked power politics triumphs over the principles of humanity and Christendom, of freedom and even over the monarchical principle. . . . We have heard the slogans of a pitiless war of extermination';[111] a 'war' in which one nationality was to be destroyed so that another might exist without threat. Stablewski also noted the black irony of Europe's hegemonic power fearing colonization by the stateless Poles. Given the 'expansionist power' of Germany, the recent panicked proclamation of *Ausnahmemaßregeln* betrayed a 'curious national modesty'. Similarly illogical to his eyes was the sight of Bismarck implementing 'an integral part of the Social Democratic Party programme' in the shape of colonization measures which broke up large Polish estates. Bismarck's refutation of the charge of an attack on Catholicism was simply disingenuous, according to the Polish representative, and he also warned Bismarck away from his suggested biopolitical measures, which he labelled 'Malthusian theory dressed up in law', that sought to manipulate the numbers of Polish and German residents, by proscribing intermarriage. Or, he asked rhetorically, did Bismarck also wish to follow the example of the Pharaohs of Egypt who drowned the sons of the Israelites in the Nile—'will you use the Vistula and the Warta for Poland's babies?'[112]

[109] Windthorst, *Verhandlungen des Hauses der Abgeordneten*, 28 January 1886, pp. 176–81.
[110] Hugo Wehr, *Verhandlungen des Hauses der Abgeordneten*, 28 January 1886, pp. 184–6.
[111] Florian von Stablewski, *Verhandlungen des Hauses der Abgeordneten*, 29 January 1886, p. 192.
[112] Florian von Stablewski, *Verhandlungen des Hauses der Abgeordneten*, 29 January 1886, pp. 192–7. Ludwig von Jażdzewski also refuted the right of the House to move against Polish national identity through '*Ausnahmeregeln*', arguing that the rights to Polish language, nationality, and

At this the Minister of the Interior Puttkamer made very clear that he considered talk of a 'war of extermination' to be quite distant from the aim of ridding Germany of 'Polish agitators'. Nonetheless he did consider it the role of the state to protect the primacy of German nationality within the empire:

> Gentlemen we are the German state *par excellence* and we would be denying our world historical calling if we took or allowed any step that denied our state its purely German character. Gentlemen, we are not in a position to permit a Lithuanian, Wendish, Danish let alone a Posen-Polish *Landtag*, which would see it as its duty to create a centrifugal wedge in the solid structure of our unified German state.[113]

Puttkamer inverted Stablewski's use of '*Vernichtung*' to support Wehr's notion of a Polish plan of internal colonization, pointing to the fact that the Poles' hoped-for return to the Polish borders of 1772 would mean 'the carving up and destruction' (*Zerschneidung und Vernichtung*) of the Prussian state, 'that is, the destruction [*Vernichtung*] of German hegemony, that is above all committed to the safety and the well-being of the German nation.' Already the colonizing pressure of the Poles was such, Puttkamer argued, that German workers were forced to emigrate whilst the hitherto loyal Masurians were succumbing to Polonization. The new colonization measures were aimed at stemming this threat of Prussia's insidious, colonizing Poles. Certainly, Puttkamer argued, the measures were not confessional in nature, as the expulsion of Polish Jews alongside Polish Catholics demonstrated.[114]

Returning to the debate to defend himself from claims of having offended the dignity of the Prussian crown in his earlier speech, Bismarck offered a line-by-line exegesis of Friedrich Wilhelm III's proclamation of 1815, which had guaranteed the Poles the right of free religion and speech in public affairs as well as the right to maintain their own sense of nationality. Startlingly, Bismarck argued that this was not a treaty between Prussia and the Poles. 'It was not the Magna Carta,' he declared, but rather an ambitious reform programme that simply could not be realized because of Polish agitators, who were Germany's 'Fenians'.[115] These sentiments were echoed by the National Liberal Dr Ludwig Enneccerus, who warned of Germany being swamped by Polish migration, the effects of which were exacerbated by German emigration to America. Inner colonization, he argued, was a part of Germany's imperial task, and if external colonies had proven to be costly, then surely the cost of maintaining the strength of the German nation inside its borders should be paid for with the same level of commitment.[116]

religion were the province of God alone, unable to be struck down by positivist lawmaking. Ludwig von Jażdzewski, *Verhandlungen des Hauses der Abgeordneten*, 30 January 1886, pp. 251–2.

[113] Puttkamer, *Verhandlungen des Hauses der Abgeordneten*, 29 January 1886, p. 199.

[114] Puttkamer, *Verhandlungen des Hauses der Abgeordneten*, 29 January 1886, pp. 199–203. Wilhelm von Hammerstein also worried about the Catholicization of the Masurians. See *Verhandlungen des Hauses der Abgeordneten*, 30 January 1886, p. 258. On the liminality of the Masurians, see especially Richard Blanke, *Polish Speaking Germans? Language and National Identity Among the Masurians since 1871*, Böhlau, Cologne, 2001.

[115] Bismarck, *Verhandlungen des Hauses der Abgeordneten*, 29 January 1886, pp. 206–12.

[116] Ludwig Enneccerus, *Verhandlungen des Hauses der Abgeordneten*, 29 January 1886, pp. 213–16.

For rhetorical hyperbole, Stablewski's jeremiad and Bismarck's epic rewriting of history were exceeded only by the epochal history of the expulsions proffered by the Conservative Christoph von Tiedemann (brother of the later founder of the *Ostmarkverein*, Heinrich von Tiedemann). For Tiedemann, the expulsions were not merely expedient from a short-term perspective. Rather, it was a question of 'a millennium of struggle for the rule of the Germans and the Poles over the region between the Elbe and the Vistula'. In a speech that highlighted Polish 'barbarism' and German colonizing and civilizing efforts in the region dating back to the thirteenth century, Tiedemann presented the Prussian expulsions and colonizing measures as a continuation of a centuries-long foreign policy:

> It is about an ancient struggle for rule between the Poles and the Germans. Let us call the thing by its true name. It is not our intent to turn the Poles into Germans, which in my opinion would be a white washing. What we want however is that we no longer allow ourselves to be pushed from the land that we have conquered through centuries of long struggle with the sword and the ploughshare! We want what we have always wanted—to plant and maintain our traditions and culture in the Eastern Marches of our state, and when it is announced, as it was so magnificently by the Minister, that German colonization will be undertaken again, then I hope that even if we do not live to see the results, our children and grandchildren will find the same legal order and security as all subjects of the united Prussian provinces under the sceptre of the Hohenzollerns.[117]

Appalled by the appropriation of nationalism by those in favour of the expulsions, the left liberal Heinrich Rickert sought to wrest back control of the concept of 'the nation', posing the question of 'what exactly is the national?' He argued that all of the parties in the House were committed to the 'nation' and that Bismarck could not simply decree that his decisions were automatically for the national good, thereby monopolizing the term for parties friendly to the government. He also denounced the overtly historical nature of the conservatives' framing of events. His party was not interested in the restoration of Poland in line with the borders of 1772, nor was it interested in 1862/3 or any other period. It had not even debated whether expulsions were a state's prerogative. It was simply opposed to mass expulsions that took no account of the status of the individuals affected, and was opposed to un-costed new measures for colonization. Even if 30,000 were expelled, that would leave behind around 2 million Polish Prussian subjects whose animosity towards the state will have been heightened by the ferocity of the measures.[118] He rebuked Bismarck for his comments about restricting marriage between Germans and Poles as dabbling in matters way beyond the competence of the state, and found himself astounded to see that conservatives, who had always been so firmly against the redistribution of the eastern estates, were now the champions of land reform.[119]

[117] Christoph von Tiedemann, *Verhandlungen des Hauses der Abgeordneten*, 30 January 1886, pp. 225–8.
[118] Heinrich Rickert, *Verhandlungen des Hauses der Abgeordneten*, 30 January 1886, pp. 228–33.
[119] Heinrich Rickert, *Verhandlungen des Hauses der Abgeordneten*, 30 January 1886, p. 237.

Once the discussion was closed, the opposition parties, citing a point of order, refused to vote on the proposition. The result was that the governing coalition of Conservatives, Free Conservatives, and National Liberals were able to boast of a 'unanimous' decision by the Prussian *Landtag* to support the expulsion measures in the face of *Reichstag* opposition to the measures,[120] which is how the debate was dutifully reported by the government's *Neueste Mittheilungen*.[121]

Given that the expulsions led seamlessly into the measures directed against Germany's citizen Poles, the Polish question continued to be debated throughout February 1886, as concrete measures for the Settlement Commission and for the employment conditions of teachers and medical assistants in the eastern provinces were debated. The mass expulsions were explicitly noted as inextricably linked to the new colonization efforts, not least by the Polish deputies, who continued to insist that the measures as a whole constituted a concerted campaign of exceptional measures aimed at destroying the Poles as a separate nationality within the empire. While the Prussian Minister for Agriculture Dr Robert Lucius could extol the virtues of creating a citizen yeomanry and stemming the flood of migrants to America by offering land in the east,[122] the Polish deputies saw only a concerted attack on their nation:

> We Poles are simply there and the fact of our existence cannot be denied. As we are there, we naturally have our national sensibility, our national endeavours, the foremost of which is our drive for self-preservation. Even our bitterest enemies cannot blame us for wanting to remain that which we are, and when we use to the fullest extent all legal means at our disposal to maintain our nationality, that is simply natural. . . . Gentlemen, our only crime is that we live, in fact, our existence. A crime has been made of our existence, and for this imaginary crime a death sentence has been decreed. . . . The civilised world can maintain the illusion that the persecution of races and religions belongs to history. Unfortunately it was the power that supposedly stands at the apex of the civilised world that made the dark side of the past become a present reality.[123]

Despite Christoph Tiedemann's January 1886 plan to denaturalize and expel the millions of German Poles, such a flagrant abuse of the constitutional rights of German citizens was never attempted. Instead, the economic foundations of Polish national life were attacked. Land ownership was seen as offering Poles the material base for a potential future national existence beyond the German state and Prussian authorities reasoned that if this material base for Polish independence was removed the dispossessed Poles would integrate into the German nation. 'Polish' would retreat to a linguistic rather than a national category.

[120] For the results and the point of order, see *Verhandlungen des Hauses der Abgeordneten*, 30 January 1886, pp. 273–6.
[121] 'Der Abschluß der Polendebatte', *Neueste Mittheilungen*, 2 February 1886, p. 1.
[122] Robert Lucius, *Verhandlungen des Hauses der Abgeordneten*, 22 February 1886, pp. 686–90.
[123] Wierżbiński, *Verhandlungen des Hauses der Abgeordneten*, 22 February 1886, pp. 683–6.

The post-expulsions phase of redistributing land ownership in the Prussian east was met with great enthusiasm by liberal imperial enthusiasts because it offered the opportunity of complementing the recent introduction of a state policy of overseas colonialism with a form of inner colonialism that they hoped would create the type of citizen yeomanry they deemed necessary for a liberal German state.[124] To the great surprise of Bismarck, when he cautiously sent Tiedemann to sound out Johannes Miquel on the possibility of spending 10 million Marks for the purposes of buying the properties of near-bankrupt Polish nobles and selling them to German colonists, Miquel 'all afire' demanded that 100 million Marks be made available.[125] Whereas Bismarck saw this aspect of the plan as a 'decorative' addition to the expulsion measures,[126] Miquel saw the anti-Polish measures as a unique opportunity to construct an independent citizenry of freehold farmers (*Freibauern*), rather than impoverished cottagers whose primary economic role was to service the estates of Junker agribusiness.[127] Rudolf von Bennigsen, although in temporary retirement, also favoured these colonizing measures.[128]

The debate on the new provisions for the parcelization of Polish land, alongside measures targeting schools and medicine, see-sawed for days between those who saw only more *Ausnahmegesetze* and those who saw the salvation of the nation from a Polish fifth column through inner colonization.[129] With an absolute majority in the *Landtag*, the Conservative/National Liberal government was always assured that these measures would be passed, albeit with the withering denunciations of the left liberals, Poles, and Catholic Centre Party ringing in their ears and transmitted across Germany via the press. German spa towns complained about the effects of the expulsions on Russian tourists,[130] and the Catholic organ *Germania* argued that the east had been so depopulated of Polish workers that 'heathen Chinese' might be required

[124] Mai, *Die preußisch-deutsch Polenpolitik 1885/87*, p. 100. William W. Hagen, *Germans, Poles, and Jews: The Nationality Conflict in the Prussian East, 1772–1914*, University of Chicago Press, Chicago, 1980, p. 134, Piotr S. Wandycz, *The Lands of Partitioned Poland, 1795–1918*, University of Washington Press, Seattle, 1974, p. 236. Blanke, 'Bismarck and the Prussian Polish Policies', pp. 227–8. Wandycz explicitly links the approval of the National Liberals for the expulsions of non-Prussians to the National Liberals' colonial aspirations. See also Robert Lewis Koehl, 'Colonialism Inside Germany', pp. 255–72.

[125] Hans Herzfeld, *Johannes von Miquel. Sein Anteil am Ausbau des Deutschen Reiches bis zur Jahrhundertwende. Vol II*, Meyersche Hofbuchhandlung, Detmold, 1938, p. 77. Richard Blanke puts the originally suggested figure at 20 million. *Prussian Poland in the German Empire (1871–1900),* Columbia University Press, New York, 1981, p. 63.

[126] Herzfeld, *Johannes von Miquel Vol II*, pp. 78–80.

[127] Blanke, 'Bismarck and the Prussian Polish Policies', pp. 227–8.

[128] Bennigsen wrote to his wife on 1 April 1886 of his deep interest in the resolution to colonize the east as a part of the anti-Polish measures, which he saw as 'significant for the future'. Hermann Oncken, *Rudolf von Bennigsen. Ein deutscher liberaler Politiker nach seiner Briefen und hinterlassenen Papieren. Vol II*, Deutsch Verlags-Anstalt, Stuttgart, 1910, p. 525.

[129] See especially, *Verhandlungen des Hauses der Abgeordneten*, 6 February 1886, 22 February 1886, pp. 357–69; 22 February 1886–26 February 1886, pp. 683–847. See also 'Die Germanisirung der polnisch-preußischen Landestheile', *Neueste Mittheilungen*, 11 February 1886, p. 1; 'Die Fortsetzung der Polendebatte', *Neueste Mittheilungen*, 25 February 1886, p. 1; 'Die Debatte über die Polenfrage', *Neueste Mittheilungen*, 27 February 1886.

[130] GStAPK Rep 1176 2a Bd X, p. 161.

to work the Junker estates,[131] but these were minority voices, as the mood of national self-defence trumped the appeals to international freedom of movement. Even stern protests from Vienna about the flood of Russian Poles who had begun moving into Austrian Galicia had no effect on the policy.[132]

As late as 1909, the German Conservative Count Kuno von Westarp argued in the *Reichstag* that 'according to German national law, there is no concept of the Polish nationality. . . . The Poles are Prussian citizens, they are citizens of the German Empire and belong to the German people.'[133] Nonetheless, in 1885–86, Prussia had sought to combat precisely this denied Polish nationality. Expulsions were the means by which non-citizen Poles were attacked, whereas for citizen Poles, the redistribution of Polish estates, the Germanization of Polish children in German schools and the Germanization of Prussia's Polish Catholics were the measures settled upon, irrespective of the 1815 guarantees of King Friedrich Wilhelm III of Prussia to respect Polish linguistic and religious identity.[134]

The expulsion of non-citizen Polish residents from Prussia was a deliberate attempt to recalibrate existing provincial police powers which enabled the deportation of individuals deemed burdensome by local authorities to enable these same authorities to expel all Russian and Habsburg Poles on the basis that they were burdensome by definition. Contrary to the accusations of opponents of the expulsions in the *Reichstag* and the Prussian House of Deputies, no extra-judicial or extra-constitutional provisions were required to displace these tens of thousands of Poles from the Prussian east. Carefully reserved for non-citizens, the expulsions were as legal and constitutional as they were destructive.

On the question of agency, it is certain that Bismarck approved and authorized Prussia's decision to clamp down on Polish immigration, despite it running contrary to the interests of the agribusiness magnates of the east. Yet he did so at the prompting of his close confidantes Puttkamer, Goßler, and Christoph von Tiedemann, who in turn had been placed under pressure by provincial police, school, and religious authorities as well as civic organizations and chambers of commerce to alleviate the demographic stresses ostensibly afflicting the Prussian frontier. The *Reichstag* may not have supported the measures, however, state officials and civil society associations at all levels of the Prussian state had no such qualms.

[131] *Germania*, 15 March 1889 in GStAPK Rep 77 Tit 1176, Nr 2a, Bd XI, pp. 180–2. On Chinese workers and the German Empire, see Conrad, *Globalisation and the Nation in Imperial Germany*, pp. 203–74.

[132] Reuß to Bismarck, 9 January 1886 in GStAPK Rep 1176 Tit 2a Bd VIII, p. 91. Reuß reported that 353 families, more than 1,000 individuals in total, had been diverted by this stage.

[133] Kuno von Westarp, *Verhandlungen des Reichstages*, 213th Sitzung, 25 February, 1909, p. 7144.

[134] Martin Broszat, *Zweihundert Jahre deutsche Polenpolitik*, Ehrenwirth Verlag, Munich, 1963, pp. 61–2.

5

A Question of Motivation

Expelling Jews or Anti-Semitic Expulsions?

> Here we had been taken to a lonely place where only that house was to be seen; our things were taken away, our friends separated from us; a man came to inspect us, as if to ascertain our full value; strange-looking people driving us about like dumb animals, helpless and unresisting; children we could not see crying in a way that suggested terrible things; ourselves driven into a little room where a great kettle was boiling on a little stove; our clothes taken off, our bodies rubbed with a slippery substance that might be any bad thing; a shower of warm water let down on us without warning; again driven to another little room where we sit, wrapped in woollen blankets too large; coarse bags are brought in, their contents turned out, and we see only a cloud of steam, and hear the women's orders to dress ourselves—'Quick! Quick!' or else we'll miss—something we cannot hear. We are forced to pick up our clothes from among the others, with the steam blinding us; we choke, cough, entreat the women to give us time; they persist, 'Quick! Quick!'—or we'll miss the train!—Oh so we really won't be murdered! They are only making us ready for the rest of our journey, cleaning us of all suspicions of dangerous sickness. Thank God![1]

Taken from Mary Antin's 1912 *The Promised Land* and thereafter cited by Jack Wertheimer in his book *Unwelcome Strangers*, this passage describes the experience of Jewish refugees from what she called 'plague-ridden Russia', passing through Germany on their way to North America as they were being treated preventively against cholera. As Antin makes clear, refugees using Germany as a staging post for their journeys further westward were dealt with expeditiously, even brusquely by German officialdom. At such times, she noted, 'we travellers felt hurt at the way the Germans treated us.' Nonetheless, Antin maintained, the experience of transmigration was on the whole more positive. 'Moved by our distress, the German officers gave us the best advice they could.' And, despite the rudeness they occasionally encountered, the progress of her band of provincial migrants leant itself to moments of wry self-reflection, perceiving themselves to be rustic yokels out of place in the humming cities of Berlin and Hamburg. Re-reading her letters from the time, Antin confided that 'the humorous side of our adventures did not escape me'.[2]

[1] Mary Antin, cited in Jack Wertheimer, *Unwelcome Strangers: East European Jews in Imperial Germany*, Oxford University Press, New York, 1987, p. 51.

[2] Mary Antin, *The Promised Land*, Houghton Mifflin, New York, 1912, pp. 172–6.

In Wertheimer's emplotment of Antin's description of German public health measures, however, such moments of lightness disappear. No longer an experience evoking the full palette of human emotions, the experience of eastern Jews travelling through Bismarckian Germany is reduced to one of programmatic mistreatment. Knowingly encoded with the signature motifs of Holocaust literature—disorienting train voyages, removal of clothes, forced bathing, coughing, choking, and fears of murder—Wertheimer deploys Antin's memoir to support his sense that the *Kaiserreich* was bedevilled by systemic anti-Semitism, marked by an 'efficient program to expel the "unwanted element" expeditiously'.[3] Figuratively foreshadowing the genocidal practices of the NSDAP at the height of the Holocaust, this reading of the experience of eastern Jews in Germany during the 1880s and 1890s seems somewhat incomplete. As Antin makes clear, far from meeting a murderous end at the hands of German officialdom, the denouement of Germany's handling of *Ostjuden* was precisely the opposite to that of the Nazi period; state assistance to those seeking a new life in America.

So too, with regard to the Prussian expulsions of 1885–86 Wertheimer figures prominently amongst those those who have depicted them as particularly anti-Semitic in nature, proposing that 'the expulsions of the mid-1880s served as the culmination of a campaign aimed at clamping down on Jewish migration'.[4] He is not alone here, with Till van Rahden similarly arguing that Prussia's 'anti-Semitic administrative practice culminated in 1885–86 in the expulsion of roughly ten thousand Polish and Russian Jews by the Prussian authorities'.[5] With

[3] Wertheimer, *Unwelcome Strangers*, p. 51.

[4] Wertheimer, *Unwelcome Strangers*, pp. 47–9. The original work proposing that the expulsions were anti-Semitic in intent was Helmut Neubach's *Die Ausweisungen von Polen und Juden aus Preussen 1885/86*, Otto Harrassowitz, Wiesbaden, 1967. For Neubach, these expulsions were an outgrowth of ostensibly anti-Semitic expulsions from Berlin in 1884. Neubach attempted to match the apparent removal of foreigners from Berlin in 1884 with Klara Eschelbacher's mysterious claim that 'in den Jahren 1881/82 wurden die Russen ausgewiesen', and that 'nur dominieren seit den Massenausweisungen von 1881/82 nicht mehr die Russen, sondern die Galizianer' by arguing that she had misdated the removal of Russian Jews from Berlin as 1881–82 instead of 1884. Although her 1881 date is faithfully reproduced by Salomon Adler-Rudel and Monika Richarz, it is also possible that Eschelbacher is referring loosely to the 'expulsion' of Jews from Russia. Certainly, as Neubach says, 'nothing is known of mass expulsions in the years 1881/82'. In the case of 1884, evidence of expulsions centred on Berlin is equally scanty, and what there is suggests measures against primarily Russian students and workers in Berlin who ostensibly threatened to infect Germany with their 'socialism' and 'nihilism'. See the *Neue Freie Presse*, 2 August 1884, p. 17; *Neue Freie Presse*, 4 August 1884, p. 3; The *Neueste Mittheilungen*, 5 August 1884, p. 1 suggests the issue had been embellished by left liberals for electoral purposes. Neubach, *Die Ausweisungen von Polen und Juden*, pp. 18–19; Adler-Rudel, *Ostjuden in Deutschland*, p. 20; Monika Richarz, 'Die Entwicklung der jüdischen Bevölkerung', in S. M. Lowenstein, P. Mendes-Flohr, P. Pulzer, and M. Richarz, *Deutsch-jüdische Geschichte in der Neuzeit, III, 1871–1918*, CH Beck, Munich 1997, p. 24; Neubach, *Die Ausweisungen von Polen und Juden*, pp. 18–19. Importantly, when the second half of Eschelbacher's article was published in 1923, no attempt was made to revise ostensibly faulty dates or to indicate that any error had been made. See Klara Eschelbacher, 'Die ostjüdische Einwanderungsbevölkerung der Stadt Berlin', *Zeitschrift für Demographie und Statistik der Juden* 16, 1920, pp. 6–7; Klara Eschelbacher, 'Die ostjüdische Einwanderungsbevölkerung der Stadt Berlin', *Zeitschrift für Demographie und Statistik der Juden* 17, 1923, pp. 10–20.

[5] Till van Rahden, *Jews and Other Germans. Civil Society, Religious Diversity, and Urban Politics in Breslau, 1860–1925*, University of Wisconsin Press, Madison, 2008, p. 200.

1885–86 occasioning the expulsion of thousands of Jews residing in Prussia, *prima facie* the case for anti-Semitism playing a central causal role for the expulsions appears strong.

While the precise figures are disputed, Wertheimer and Rahden are correct in so far as somewhere in the vicinity of 10,000 Russian and Austrian Jews were expelled in 1885–86. Yet that these expulsions targeted Jews *qua* Jews is less clear. Framing the events of the 1880s primarily through the lens of the Jewish experience obscures the fact that twice the number of Catholics was expelled as part of the same anti-Polish measures. Beyond this, conflating the 1885 *Massenausweisungen* with exclusionary citizenship reforms introduced earlier in the decade is problematic. While Prussian measures in 1881–82 did indeed seek to stymie the naturalization of eastern Jews in the wake of the wave of economic migration out of Russia in those years, the 1885–86 expulsion measures stemmed from different processes.

The account of Dieter Gosewinkel offers a partial corrective to this. Sympathetic to Wertheimer's claims of growing anti-Semitism, Gosewinkel carefully argues that the years 1880–82 saw a flurry of citizenship measures aimed at reversing the liberality of citizenship regulations in the 1870s so as to minimize the opportunity for (amongst others) Russian and Habsburg Jews to obtain German citizenship. On the other hand, for Gosewinkel the 1885–86 expulsion measures were aimed squarely at non-resident Poles, irrespective of faith. Coupled with the earlier strict citizenship regulations placed on immigrants from the Russian and Austrian east, the expulsions did radically alter the capacity of Jews to reside in Prussia as either citizens or resident aliens.[6] Yet, whereas on the earlier question of citizenship restrictions, 'anti-Semitic and anti-Polish motives were mutually reinforced',[7] in the case of the 1885–86 expulsions the former were clearly subordinate to the latter.

Jochen Oltmer has gone one step further. Notwithstanding the fact that many thousands of Jews were expelled as part of the anti-Polish moves of 1885–86, Oltmer has pointed out that 'no systematic policy of expelling eastern, central and southeastern European Jews was developed'. For Oltmer, specifically anti-Semitic motivations were not causal in the expulsions. Instead, 'Prussia's praxis towards Jews from the east and southeast was just as arbitrary as that against other foreigners, who possessed an extremely precarious residency status by dint of the far reaching expulsion powers of police authorities.' At the very least, the economic benefits of assisting Jews in their transmigration from the Russian and the Habsburg Empires to the United States were simply too great to apply racially motivated blanket restrictions on Jews entering the empire.[8]

[6] Dieter Gosewinkel, *Einbürgern und Ausschließen Die Nationalisierung der Staatsangehörigkeit vom Deutschen Bund bis zur Bundesrepublik Deutschland*, Vandenhoeck & Ruprecht, Göttingen, 2001, pp. 238–46. Dieter Gosewinkel, '"Unerwunschte Elemente"; Einwanderung und Einbürgerung der Juden in Deutschland 1848–1933', *Tel Aviver Jahrbuch für deutsche Geschichte* 27, 1998, pp. 78, 89–93.

[7] Gosewinkel, '"Unerwunschte Elemente", p. 92.

[8] Jochen Oltmer, '"Verbotswidrige Einwanderung nach Deutschland": Osteuropäische Juden im Kaiserreich und in der Weimarer Republik', *Aschkenas* 17(1), 2009, pp. 97–121.

That there had been calls beyond officialdom throughout Germany prior to 1885 to restrict Jewish immigration seems clear enough. The preceding history of the Berlin *Antisemitismusstreit* precipitated by Heinrich von Treitschke, as well as Adolf Stoecker's so-called '*Berlinerbewegung*' of anti-Semites between 1879 and 1882 needs no rehearsal.[9] Yet seemingly overt anti-Jewish measures require closer scrutiny.[10] As Oltmer makes clear, Wertheimer errs when he points to naked anti-Semitism as the primary grounds for the attempt to tighten border controls during the early 1880s.[11] The tone of official deliberations during 1881–82 was generally more considered than a straightforward appeal to anti-Jewish prejudice. Government officials, including Bismarck's state secretaries, recognized the transient nature of westward, through-migration of impoverished Russian Jews and in discussing their response to the plight of Jewish migrants consistently acknowledged that a modicum of German assistance—alongside strict management—was necessary and appropriate. It was the nature of this assistance and the management of the large numbers of migrants in transit that was in question.[12] Quickly decided upon were border restrictions to control the pace of the flow of migrants westward. So too, permanent residency restrictions were introduced to ensure

[9] On this see for example Uffa Jensen, *Gebildete Doppelgänger: Bürgerliche Juden und Protestanten im 19. Jahrhundert*, Vandenhoeck & Ruprecht, Göttingen, 2005, pp. 197ff; Marcel Stoetzler, *The State, the Nation and the Jews: Liberalism and the Antisemitism Dispute in Bismarck's Germany*, University of Nebraska Press, Lincoln, 2008; Peter Pulzer, *Jews and the German State: A Political History of a Minority, 1848–1933*, Wayne State University Press, Detroit, 2003, pp. 96ff; Sonja Weinberg, *'Germania* and the Anti-Jewish Riots in Germany and Russia, 1881–1882', *Leo Baeck Year Book*, 52, 2007, pp. 133–48.

[10] One example from Württemberg early in the empire's history illustrates that this was not just the case for the 1880s. In 1874 a report had discussed the problem of 'itinerate begging Jews from Austria, Russian-Poland, East Prussia and parts of Prussian Poland'. The report also called for the Prussian government to restrict the entry of 'Polish Jews from Russia and Austria'. This seems to be a straightforward anti-Semitic call. Yet, that it was simply the Jewishness of the migrants that constituted the problem rather than their impecuniosity is debatable, with the report further arguing that the 'Israelite population of Württemberg' required particular protection from these Jewish immigrants, because the migrants from the east were impoverished and making unreasonable demands on their coreligionists. The report offers a glimpse of a government attempting to protect its Jewish citizens from the demands for charity made by destitute Polish Jews, whose behaviour was reported as mirroring that of similarly burdensome foreign beggars and impoverished 'Gypsies' who were treated in precisely the same way. The result of this report was a ministerial decision on 19 February 1875 that 'destitute Jewish Poles from Russia' (*mittellosen israelitischen Polen aus Rußland*) could be deported—a decision which did not constitute an extraordinary legal extension of existing powers to expel destitute foreign beggars. See 'Belästigung der israelitischen Bevölkerung Württembergs durch herumziehende bettelnde Juden aus Oesterreich, Russisch-Polen, Ostpreußen und theilweise aus Preußisch Polen', 3 July 1874, in BHStA MA 55998 (unnumbered). For the decision, see 'Entschließung vom 19 Februar 1875 Nr 14417' in a memo circulated on 3 May 1880 in BHStA MA 55998. See also Neubach, *Die Ausweisungen von Polen und Juden aus Preussen 1885/86*, p. 4.

[11] Wertheimer, *Unwelcome Strangers*, p. 49. Oltmer, '"Verbotswidrige Einwanderung nach Deutschland", pp. 100–1, Till van Rahden, 'Words and Actions: Rethinking the Social History of German Antisemitism, Breslau, 1870–1914', *German History* 18(4), 2000, pp. 424–5; Till van Rahden, 'Die Grenze vor Ort—Einbürgerung und Ausweisung ausländischer Juden in Breslau 1860–1918', *Tel Aviver Jahrbuch für deutsche Geschichte*, 27, 1998, p. 56.

[12] See in particular the correspondence contained in GStAPK Rep 77, Tit 1176, Nr 2a, adh I. *Die Einwanderung aus Russland und Juden-Verfolgung.*

that the migrants continued to move through Germany on their way to North America. Without ever intending to absorb the wave of impoverished Jews leaving Lithuania and Congress Poland (the majority of whom had no intention of staying in any case), Prussia developed a set of procedures to facilitate America-bound Jewish migrants from Russia wishing to leave Europe from German ports.[13]

According to the Prussian Foreign Office, paraphrasing Bismarck's May 1881 instructions to it, there was a concern that large numbers of Polish Jews from Congress Poland had also joined the wave of Jewish economic migrants from impoverished Lithuania. Once again, there was no problem with this, providing that these potentially 'Polonizing' elements continued on to destinations further west and did not acquire residential rights:

> The Jews are not only from the former Lithuanian provinces, but also the old Russian territories, the majority of which are in Poland, so that we must be prepared for a strong increase in the Polish element. The Imperial Chancellor believes that a particular procedure with regard to Jewish immigration from Russia needs to be established, in order to hinder this.[14]

The precise procedure for facilitating transmigration but hindering the permanent immigration of 'Polonized' Jews was decided at a meeting on 22 May 1881, where it was decided that while migrants from the east would be counted by confession, they would not be restricted by confession. A distinction would also be made between requests for naturalization and entry, to the end that 'Russian subjects, without reference to religious belief, are in the rule to be denied naturalisation', while conditions of entry were to be carefully monitored and regulated, to ensure that the entry and flow of migrants (who were congregating in significant numbers in regions such as Oppeln and Gumbinnen) was controlled. That these regulations would at this time mainly affect impoverished Jews exiting Russia was clear to everyone. That the chancellor and his assembled ministers sought to avoid promulgating specifically anti-Jewish measures is equally clear.[15] Thereafter,

[13] Once thought to be a product of the 1881–82 pogroms, this migration was actually economic, chain migration originating from areas outside the Ukrainian gubernias that were hardest hit by the wave of anti-Semitic violence in 1881. See most recently Yannay Spitzer, 'Pogroms, Networks and Migration: The Jewish Migration from the Russian Empire to the United States 1881–1914', Unpublished paper, 2014, available at <http://gradstudents.wcas.northwestern.edu/~ysp201/Papers/Spitzer_PogromsNetworksMigration.pdf>. See too John Doyle Klier, *Russians, Jews and the Pogroms of 1881–1882*, Cambridge University Press, Cambridge, 2011; Irwin M. Aronson, *Troubled Waters: The Origins of the 1881 Anti-Jewish Pogroms in Russia*, University of Pittsburgh Press, Pittsburgh, 1990; Irwin M. Aronson, 'The Attitudes of Russian Officials in the 1880s towards Jewish Assimilation and Emigration', *Slavic Review* 34(1), 1975, pp. 1–18; Leah Platt Boustan, 'Were Jews Political Refugees or Economic Migrants? Assessing the Persecution Theory of Jewish Emigration, 1881–1914', in Tim Hatton, Kevin O'Rourke, and Alan Taylor (eds), *The New Comparative Economic History: Essays in Honor of Jeffrey G. Williamson*, MIT Press, Cambridge, MA, 2007, pp. 267–90.

[14] GStAPK Rep 77, Tit 1176, Nr 2a, adh I, p. 6, 17th Mai 1881.

[15] GStAPK Rep 77, Tit 1176, Nr 2a, adh I, pp. 9–10, 22nd Mai 1881. This is of course the meeting at which Bismarck suggested that officials might perhaps expel from a brimming Oppeln any who 'notoriously live from usury', to which a sceptical Puttkamer replied that this could only be considered in absolutely 'scandalous' cases. Bismarck readily agreed. Neubach, *Die Ausweisungen von Polen und Juden*, p. 4.

when Bismarck advised the Foreign Office and thence Puttkamer in February and mid-May of 1882 that permanent (as opposed to transient) Jewish immigration from Russia was to be hindered, the main reasons given for this appear to be that these migrants were penniless, unskilled, and Polish.[16]c

For the period of 1881–82, perceiving migration policy solely through the teleological lens of twentieth-century anti-Semitism distorts its weighting. Anti-Semitism perhaps inflected but did not drive official responses to westward mass migration. To the extent that Bismarck toyed with anti-Semitism as a potentially useful wedge issue between the nationalist liberals and left liberals in 1881,[17] this dalliance was an electoral failure and was quickly discarded.[18] The large numbers of Jews emigrating from Russian Lithuania and Congress Poland were consistently allowed to enter Germany for the purpose of using it as a transit point for their American destination,[19] in accordance with Puttkamer's express directions.[20] Despite the ferocity of the preceding German feuilleton debate on Jewish migration sparked by Treitschke's anti-Semitic outburst in the *Preußische Jahrbücher*,[21] Prussian authorities consistently offered assistance to migrating Jews, transporting, feeding and clothing them. Notwithstanding the heightened public sensitivities regarding supposedly 'trouser-selling youths' from the east and a reluctance to offer citizenship to the new wave of Jewish economic migrants leaving Russia, Germany facilitated those *Ostjuden* desiring passage to the United States to escape their impoverished circumstances in Russia.

If Jewish religious affiliation was one of several categories (alongside Polish nationality and acute poverty) militating against a generous naturalization policy and driving increased border regulation in 1881–82, it was not the motivating force behind the expulsions of 1885–86. On the evidence available, the claim that the expulsions of 1885–86 were intrinsically anti-Semitic seems difficult to sustain.[22] Instead, as Eli Nathans has pointed out, with Jewish transmigration

[16] See Bismarck's warning to Puttkamer regarding a 'Jewish proletariat' being pushed out of Russia, 11 February 1882 in GStAPK Rep 77, Tit 1176, Nr 2a, Beilage 1, p. 193. It is worth pointing out that the complaint that unskilled and destitute Jewish refugees from Russia were settling in the west extended well beyond way-station nations such as Germany and France, with residents of their final destinations of Britain and America similarly unsympathetic. See Sam Johnson, *Pogroms, Peasants, Jews: Britain and Eastern Europe's 'Jewish Question', 1867–1925*, Palgrave Macmillan, New York, 2011; Salomon Adler-Rudel, *Ostjuden in Deutschland 1880–1940*, JCB Möhr, Tübingen, 1959, pp. 6–11.

[17] Fritz Stern, *Gold and Iron: Bismarck Bleichröder and the Building of the German Empire*, Allen & Unwin, London, 1980, pp. 526–7; Hans Ulrich Wehler; *Bismarck und der Imperialismus*, p. 472; Eli Nathans, *The Politics of Citizenship in Germany: Ethnicity, Utility and Nationalism*, Berg, Oxford, 2004, pp. 119–120; Pulzer, *Jews and the German State*, pp. 103–5.

[18] Peter G. J. Pulzer, *The Rise of Political Anti-Semitism in Germany and Austria*. Harvard University Press, Cambridge, MA, 1988, pp. 92–4; Stern, *Gold and Iron*, p. 527.

[19] Jochen Oltmer, ' "Verbotswidrige Einwanderung nach Deutschland", pp. 100–1.

[20] Neubach, *Die Ausweisungen von Polen und Juden*, p. 15.

[21] Marcel Stoetzler, *The State, the Nation and the Jews*. See also Neubach, *Die Ausweisungen von Polen und Juden*, pp. 8–9.

[22] Wertheimer's account of the 1885–86 expulsions has also been critiqued by William Hagen, who stressed that the 'governmental action against *Ostjuden*' needs to be contextualized within the 'larger framework of its Protestant-hued Germanization policies, launched by Bismarck, aimed against the Poles…and less ruthlessly against the French and Danes'. See William W. Hagen,

now managed through additional residency restrictions, it was the Poles that were perceived as the single largest threat to the project of Germanizing the Prussian east.[23] Correspondingly, the expulsions in 1885–6 targeted Poles, irrespective of their religion.

In so far as Bismarck's *Reichstag* justification for the 1885–86 expulsions might be taken as a starting point, he bluntly declared that the measures were a necessary response to the 'Polonization' of Germans in the region.[24] During the critical first stages of the expulsion, Jews were never mentioned by Bismarck or other officials as either intended or accidental targets of the measures. Given his forthright attacks on groups previously hounded by expulsions, such as Jesuits and Socialists, it is not unreasonable to assume that, had Bismarck conceived these expulsions as anti-Semitic measures, he would have forthrightly announced them as such. Instead, when in 1885 he lambasted the disloyal 'foreign elements' in the *Reichstag* that had sided with the Poles against the expulsions, he was sure to mention the perfidy of Germany's Social Democrats, Danes, left liberals, Catholics, and even French Alsatians, but not Jews, leaving unaccosted prominent progressive and social democratic Jewish *Reichstag* deputies such as Ludwig Bamberger and Paul Singer.[25] The precise religious affiliation of foreign Poles was simply not discussed by Prussian authorities, leading the Polish *Reichstag* deputy Ludwik Jażdżewski to complain that the same Jews considered by Poles to be a Germanizing element were now being treated as a sub-section of the Polish population by the Prussian government.[26]

So too, the grassroots communication between city and district authorities and their *Landräte* did not mention Jews (or for that matter Catholics) as specific targets. Instead, without exception, the phrases used in discussions about those targeted for expulsion all referred to their nationality: 'Polish speaking foreigners' (*Ausländer polnischer Zunge*), 'unauthorised Russo-Polish arrivals' (*russisch-polnische Überläufer*), 'foreigners of Polish nationality' (*Ausländer polnischer Nationalität*). Eventually this was broadened to the term 'foreigners with

'Review: Unwelcome Strangers: East European Jews in Imperial Germany', *Journal of Modern History* 61(4), 1989, pp. 847–8. For a more general critique of teleologically driven studies of late Wilhelmine German anti-Semitism, see Lisa Fetheringill Zwicker, 'Antisemitism, the Limits of Antisemitic Rhetoric, and a Movement against Russian Students at German Universities, 1908–1914', *Leo Baeck Institute Year Book* 55, 2010, pp. 193–203.

[23] Nathans, *The Politics of Citizenship in Germany*, pp. 120–1.

[24] Bismarck, *Verhandlungen des Reichstages*, 1 December, 1885, p. 131.

[25] Bismarck, *Verhandlungen des Reichstages*, 1 December, 1885, p. 131. Bamberger had already crossed swords with Bismarck and the conservatives on the question of anti-Semitism in his contra-Treitschke article 'Deutschtum und Judentum', *Unsere Zeit* 1, 1880, pp. 188–205. For Bamberger and German anti-Semitism more generally, see Stanley Zucker, 'Ludwig Bamberger and the Rise of Anti-Semitism in Germany, 1848–1893', *Central European History* 3(4), 1970, pp. 332–52. For his part, Singer had even made a point of his Jewish heritage during the *Reichstag* debate on the expulsions.

[26] Ludwik Jażdżewski, 15 January 1886, in *Verhandlung des Reichstages* 86, Berlin 1885/86, pp. 526, 532. On the potential for anti-Polish synergies of Christians and Jews in the east, see Elizabeth A. Drummond, 'On the Borders of the Nation: Jews and the German Polish National Conflict in Poznania', *Nationalities Papers* 29(3), 2001, pp. 459–75.

Russo-Polish and Austro-Polish citizenship' (*Ausländer russisch-polnischer bezw. österreichisch-polnischer Staatsangehörigkeit*).[27] In two instances where exemptions to the expulsion order were requested in September 1885 and January 1886, the *Landrat* specifically asked for confirmation not of their religious affiliation, but that the non-citizen in question primarily spoke German.[28]

In fact the evidence suggests that, as a specific demographic category affected by the expulsions, 'Jews' seem to have been considered at the ministerial level for the first time in September 1885, when Puttkamer, clearly unaware of any expressly anti-Semitic thrust to the expulsions, inquired of Bismarck what he should do about Galician Jews who were increasingly being caught up in the measures. Puttkamer's question stemmed specifically from a report from one of his local authorities, the *Regierungspräsident* of Oppeln, whose tone clearly was that of an anti-Semite, who urged for Jews to be included in the definition of Poles. In a report in July 1885, he asked for clarification on how to proceed:

> Amongst the unauthorised Russo-Polish migrants (*Ueberläufer*) whose expulsion Your Excellency has recently ordered are numerous Jews. Just as many are among the migrants from Galicia and the general opinion is that the latter represent the most corrupted and shrewd.[29]

Presented with a clear choice between treating all Russian and Galician immigrants as Polish or attempting to screen them on the basis of confession, Bismarck replied to Puttkamer on 24 September 1885. Without wishing to offer any support to the anti-Semitic sentiment expressed by Oppeln's local governor he argued that to separate Jewish from non-Jewish Galician Poles would make an already complicated task too difficult.[30] Their status as Polish resident aliens meant simply that for Prussia:

> the Galicians are another category of Poles like the others. As much as [Bismarck] abhorred anti-Semitic endeavours, he sees the large number of poor *and non-German educated* Jews which have emigrated from the east to make money as an undesirable situation.[31]

[27] *Archiwum Państwowe w Poznaniu*, (*APwP*) Starostwo Powiatowe Kościan sygn.781; *Die Ausweisungen der polnischer Überläufer und Flüchtlinge*, pp. 1–10, 67, 79; Starostwo Powiatowe Śmigiel, sygn.332; *Die Ausweisungen der polnischer Überläufer und Flüchtlinge*, pp. 131, 149.

[28] *APwP*, Starostwo Powiatowe Śmigiel, sygn.332, pp. 22, 91–2. In the case of the governess Maria Hevelke, the employer also volunteered that she was '*evangelisch*'.

[29] Report to Puttkamer, 4 July 1885, in GStAPK Rep 77 Tit 2266B Nr 38, pp. 5, 30.

[30] Albert von Puttkamer, *Staatsminister von Puttkamer: Ein Stück preußischer Vergangenheit 1828–1900*, KF Koehler, Leipzig, 1928, p. 97.

[31] GStAPK Rep 90a B III 2b, Nr 6 Bd 97, also cited in Otto Pflanze, *Bismarck: Der Reichskanzler*, Beck, Munich, 2008, p. 768; Neubach, *Die Ausweisungen von Polen und Juden*, p. 239. The italics indicate comments added by Bismarck. The full document says: 'Bismarck teilte mit, daß wegen der Ausweisungen ihm Noten der russischen und österreich-ungarischen Regierung zugegangen seien, die auf polnische ~~und jüdische~~ [deleted by Bismarck—*MF*] Einflüße zurückzuführen seien. Die erstere sei durch Verständigung mit der russischen Botschaft erledigt, die letztere habe er durch eine Note beantwortet, die vorgelesen wurde. Der Innenminister fragte, ob auch solche galizischen Juden ausgewiesen werden sollten, die der Sprache nach nicht der polnischen sondern der deutschen Nationalität angehörten. Bismarck erwiderte, daß man sich durch das Bestreben, zwischen diesen Gruppen zu unterscheiden, die Sache unnötig erschwere. Für uns seien die Galizier der einen wie

This exchange clearly and formally confirmed that Jews would not escape being included for expulsion amongst other 'Polish' unauthorized residents simply by dint of their religion. Notwithstanding Bismarck's careful epistolic insertions, which sought to make it clear that it was their lack of capital and a German education that saw eastern Jews expelled alongside Catholics as 'Poles', by October 1885 the Prussian government had explicitly acknowledged that Polish Jews would be treated by the measures in the same way as Polish Catholics.

Beyond official political discourse, after the Treitschke inspired flurry of 1879–80, mention of Jews as a separate category had also declined in publications that devoted themselves to the demography of the Prussian east. For example, Friedrich Neumann's 1883 '*Germanisierung oder Polonisierung?*', an article that critiqued the demographic situation in Posen with reference to both Polish language and Catholic confession, but found no cause to complain about Jews, relegated Jews to an undiscussed sub-group in the statistical tables, and offered no comment whatsoever on any socio-cultural effects of their seemingly dwindling presence.[32] For the *Allgemeine Zeitung des Judenthums*, Neumann's work represented a resounding refutation of the earlier claims of Treitschke that *Ostjuden* were overwhelming Prussia's eastern provinces.[33] So too, Eduard von Hartmann's oft-cited article '*Der Rückgang des Deutschthums*' took aim at two threats to Germany in the east—Catholicism ('the arch-enemy of Germandom') and 'Polish national sentiment'.[34] Here Hartmann eschewed Treitschke's pointedly anti-Semitic attack on eastern Jews in favour of urging the government to undertake a project of 'inner colonisation to save a threatened Germandom' by seeking the 'Germanization of the Poles'; a call that fed directly into moves to establish the Settlement Commission.[35] Hartmann's opinion of Polish Jews, as professed elsewhere, was simple; like all things Polish, they were a 'lead weight around the neck of German Jewry', which, like Theodor Mommsen, he saw as strengthening rather than weakening the German nation through assimilation.[36] For Hartmann, it was not the putative

der anderen Kategorie Polen. So abhold er den antisemitischen Bestrebungen sei, sehe er doch die große Zahl armer *und undeutsch gebildeter* [added by Bismarck—*MF*] Juden, die von Osten her nach Preußen einwanderten, um sich her zu bereichern, als einen Übelstand an.' According to Neubach, Puttkamer's version has the last sentence reading: 'Frei von Antisemitismus, halte er doch die Gesamtheit dieser Juden bei ihrer undeutschen Erziehung und Gesinnung für ein höchst unerwünschtes Element.'

[32] Neumann, 'Germanisierung oder Polonisierung?', pp. 457–63.

[33] *Allgemeine Zeitung des Judenthums*, 7 April 1885, p. 239.

[34] Eduard von Hartmann, 'Der Rückgang des Deutschthums', *Die Gegenwart*, 3 January 1885, pp. 1–3; 10 January 1885, pp. 19–22.

[35] Hartmann, 'Der Rückgang des Deutschthums', p. 22. On the role of Hartmann's article in the establishment of the 1886 Settlement Commission, see Richard Blanke, *Prussian Poland in the German Empire*, pp. 45–6.

[36] Hartmann, *Das Judenthum in Gegenwart und Zukunft*, Verlag von Wilhelm Friedrich, Leipzig, 1885. On Polish Jews, see p. 82. Although saturated in racial presuppositions, this work situated Jews as an originally foreign population moving through the painful process of assimilation in the post-emancipation era. His main proviso for the success of this process was that Jews broke off their ties to left liberalism and instead gravitated to either conservatism or socialism. This political split, he argued, would assist the Jewish community in overcoming their putative sense of inner unity by forcing them to engage in polarizing political debate. Hartmann, *Das Judenthum in Gegenwart und Zukunft*, pp. 178ff.

threat of Jews, but the threatened borders between the 'German cultural realm' and the 'Slavic cultural realm' that required urgent reinforcing by the German Empire:

> We must Germanize the territory of the German Empire, we must at least secure absolute rule in our own house. . . . If the Slavs eliminate Germandom inside their borders, so must we use repression, that is to say eliminate Slavdom inside our borders if the influence of Germandom in the history of cultured nations is not to sink markedly.[37]

When it came to reporting on the expulsions themselves, the government-friendly newspaper *Neueste Mittheilungen* dutifully reported from late May 1885 onwards that, given the danger posed by the Poles, the government's new measures were necessary to 'protect Germandom, and to strengthen the national elements in provinces with a mixed population'.[38] The expulsions were seen by the conservative organ as part of a longer history of Prussia preserving culture in the east,[39] and as such utterly consistent with Prussia's tradition of civilized politics.[40] Interestingly, while Poles were a constant staple of the paper's complaints, Jews did not receive a single headline in the *Neueste Mittheilungen* in all of 1885–86—in connection with the expulsions or indeed any other matter.

So too the media pillars of the German Jewish community itself were adamant that there was no explicitly anti-Semitic dimension to the expulsions. The illustrated Jewish family periodical, *Die Saubhütte*, while admitting it was difficult to divine precisely what Bismarck actually believed, made it clear that it viewed German policy as traditionally having protected Jews from legislative attack. In line with this recognition, the paper requested that the expulsions be refined so as to specifically exclude Polish Jews.[41]

Certainly the detailed reporting of Ludwig Philippson's influential, liberal *Allgemeine Zeitung des Judenthums* (*AZdJ*), whose history of forthright denunciation of anti-Semitism in Germany was unparalleled,[42] consistently refuted the charge that the expulsions were intrinsically anti-Semitic.[43] As early as April 1885, before the Prussian House of Deputies or the *Reichstag* had debated them, the *AZdJ* was already debating the significance of the new expulsions. Citing articles from the *Norddeutsche Allgemeine Zeitung* from 27 March and one from the

[37] Hartmann, 'Der Rückgang des Deutschthums', p. 22.

[38] 'Der arme Osten', *Neueste Mittheilungen*, 27 May 1885, p. 1.

[39] 'Kulturarbeit preußischer Könige', *Neueste Mittheilungen*, 7 August 1885, p. 1; 'Freisinnige Geschichte', *Neueste Mittheilungen*, 15 September1885, p. 1.

[40] 'Hohenzollernpolitik', *Neueste Mittheilungen*, 3 November 1885, p. 2.

[41] *Die Saubhütte—Illustrirtes Israelitisches Familien Blatt*, Nr 48, 1886, in BA Lichterfelde R 43/680—Angelegenheit der Juden.

[42] On the *AZdJ*, see Sonja Weinberg, *Pogroms and Riots: German Press Responses to Anti-Jewish Violence in Germany and Russia (1881–1882)*, Peter Lang, Frankfurt, 2010, pp. 183–218.

[43] Problematically, Steven Aschheim ascribes this to the hostility that German Jews harboured towards Eastern Jews. Steven E. Aschheim, *Brothers and Strangers: The East European Jew in German and German Jewish Consciousness, 1800–1923*, University of Wisconsin Press, Madison, 1982, pp. 43, 264. Also implied by Adler-Rudel, *Ostjuden in Deutschland*, pp. 6–11. The following clarifies the paper's own refutation of this claim.

Vossische Zeitung, the editor of the *AZdJ* argued that the expulsions were aimed at Russian Poles, not Russian Jews who did not speak Polish.[44] Unsurprisingly, this view was quickly modified in light of the facts to admit that Polish Jews from Russia had also been included in the expulsions.[45]

The newspaper also made clear that Jews were not forced to go back to Russia, but could leave Germany in any direction they wanted, including to America, an option favoured by many families faced with returning to Russia.[46] In September 1885, the paper refuted the idea that Prussian Jews were happy to see Russian Jews expelled, and continued to argue that the measures were not specifically anti-Semitic, but rather targeted all Russian subjects, arguing that of those expelled only around a fifth were Jewish. It also reported the failure of belated attempts at naturalization as a way of circumventing the expulsion orders.[47] Recognizing that Polish Catholics and Jews from Russia were both affected by the measures, the paper made clear that this was a question which required all Germans, including German Jews, to exhibit inter-confessional national solidarity. Obliquely criticizing the historical mistreatment of German Jews, the paper nonetheless maintained that German Jews saw themselves primarily as part of the German nation:

> Indeed it has been made difficult for German Jews to maintain their German nationalist sensibility . . . but we Jews are and feel ourselves to be German and we will not allow anyone to rob us of our dear Fatherland, whoever it may be. For centuries this has been the home of our fathers and we share the fate of the German people in joy and in sorrow. The graves of our fathers stand here, and our cradles stood here too. German is our mother tongue and German schools educated us and our spirits are filled with the German spirit. All of this makes us just as good Germans as our Christian fellow citizens, and even mistreatment of all kinds cannot take that from us or weaken what is so deeply rooted in our souls.[48]

This nationalist sentiment was also replicated in mid-October:

> We are and feel ourselves to be German, with a fully German national patriotism, just as our co-confessionals in other lands engage themselves as sons of their homelands. We will let no-one deny us our Fatherland and our patriotism.[49]

In a detailed discussion of the expulsions in September of 1885, the paper more fully developed its editorial line on events. Eschewing a discussion of the apparent human costs of the expulsions, and their correspondence to legal norms, the newspaper instead sought to understand the circumstances that had led to their announcement. Citing and ultimately accepting Puttkamer's argument that the desire to diminish the threat of the Polonization of the Prussian east was the key reason for the measures, the paper nonetheless sought to introduce a distinction between harmless 'Jewish-Polish families' and Polish nationalist

[44] *AZdJ* 7 April 1885, p. 239.
[45] *AZdJ* 5 May 1885, p. 303.
[46] *AZdJ* 21 July 1885, p. 478; 1 Janaury 1886, p. 7.
[47] *AZdJ* 1 September 1885, pp. 575–8; 15 September 1885, p. 608.
[48] *AZdJ* 8 September 1885, pp. 591.
[49] *AZdJ* 13 October 1885, p. 666.

agitators, affirming that 'all Polish Jews speak German and they have no reason to foster sympathy for the Russian or Polish causes'. Nonetheless, the paper also accepted the government's logic that Jews could not be expected to be exempt if all Russian subjects were being deported. It also angrily denied Russian press reports that it was only Jews who were being expelled, denouncing this view as a typically Russian attempt to engage community anti-Semitism in order to quell the Russian public's concerns about Germany's expulsion of Russian subjects.[50] Instead, the newspaper consistently attacked the myth that the expulsions were aimed primarily at Jews:[51]

> Poles have been expelled if they are of either Russian or Austrian origin; whether they are notorious or dubious types, whether they are Catholic or Jewish is of no consequence and is a matter of coincidence. The vast majority of the expelled are actually Catholic, and a considerable percentage are Jewish. Neither, however, have been expelled as Catholics or Jews but rather as non-citizens. The number of deported Jews is only a quarter of the cases, and three quarters of the mass are Catholic Poles, so no-one can accurately and correctly argue that the measures are aimed at Jews.[52]

Despite accepting that Polish Jews had to expect the same treatment as Polish Catholics, the paper also provided space for a lengthy article by the *Freisinnige Partei Reichstag* deputy and Protestant Professor Julius Otto Möller which had just been published in *Die Nation* in September 1885. Four weeks of the feuilleton section were dedicated to Möller's observations on Polish Jews.[53] Interestingly, Möller's serialized *Die Polnischen Juden* argued that the expulsions were targeting Polish Jews and that they were indeed a specifically anti-Semitic measure exemplifying the extent to which 'the new German civilisation has with particular care chosen the Polish Jews as their whipping boy'. The editor of the *AZdJ*, however, took strong issue with Möller on this point, expressly stating that the paper profoundly disagreed with him. Indeed, the editor argued that such a line of argument had the effect of inadvertently supporting the triumphalist claim of Germany's anti-Semites that Jews rather than Poles were the explicit object of the measures.[54]

With this major caveat, it is nonetheless easy to see why the *AZdJ* republished Möller's piece, given that it argued against the deportation of Polish Jews on the grounds that they were infinitely capable of assimilating into German society. Despite some rather uncomplimentary characterizations of their standard of living and hygiene, Möller argued that 'these Jews are better than their reputation; their poor condition reflects more their treatment than their inner nature'. Given

[50] *AZdJ* 22 September 1885, pp. 619–20; 29 September 1885, pp. 633–4. The paper was still arguing that Jewish expulsions were a fifth of the total of all expulsions. By December 1886, this fraction had been revised to around one-third, without any alteration of the newspaper's underlying view that the expulsions were not motivated by anti-Semitism. *AZdJ*, 14 December 886, p. 807.

[51] *AZdJ* 24 November 1885, pp. 761–2. See also *AZdJ* 22 September 1885, pp. 619–20.

[52] *AZdJ* 24 November 1885, pp. 762–3.

[53] Julius Möller, 'Die Polnischen Juden', *AZdJ* 13 October 1885, pp. 675–9; 20 October 1885, pp. 693–5; 27 October 1885, pp. 709–11; 3 November 1885, pp. 725–6.

[54] *AZdJ* 13 October 1885, pp. 675–6.

their mistreatment and the chauvinistic, pan-Slavic/Orthodox nature of Russian patriotism, the article continued, it was not surprising that they had not become Russian patriots,[55] yet this did not mean that they could not become German nationalists, given the success with which earlier generations of Jewish immigrants had assimilated and the 'assimilatory power of our nationality!' And while it was true that some 'unsavoury and uncomfortable elements' existed amongst their numbers, the majority 'consist of people engaged in commerce remarkable for their temperance, thrift, and work ethic, with a level of honesty that is no lower than that of our own traders'.[56] For this reason, it was ridiculous to complain, as Treitschke had, of an impending 'Judaification' of Germany. It was equally pointless to insist upon the purity of the national spirit and population, given that all nations of culture, such as the English, the French, the Spanish, and the Italians were composed of populations of mixed origin.[57] Admittedly, Möller concluded, assimilation had not yet run its full course and although legal emancipation was a fact, it would take longer for eastern Jews to fully assimilate into German society. Yet, within one generation, 'there will be no more a Jewish question here than in France or England'.[58]

The caveats attached by the newspaper's editor prior to Möller's article show exactly how the paper sought to straddle two arguments simultaneously. The primary argument was that the expulsions were not aimed specifically at Jews but rather all foreign Poles. The secondary argument was that expelling Polish Jews as a subgroup of a larger cohort of foreign Poles mistook the extent to which Russian Jews were a Polonizing force in Prussia. The conflation of Russian Jews with Polish nationalists seemed to the *AZdJ* to be an unfortunate error which missed the opportunity to encourage a Germanizing Jewish population in the Polish east. Given the paper's support for the potential utility of eastern Jews to Germanizing efforts, it was small wonder that the paper reacted angrily to National Liberal claims in the *Kölnische Zeitung* that the removal of eastern Jews was a source of joy for Germany and German Jews. Such sentiments, they contended, might just as well have come from the pen of the notorious anti-Semite Adolf Stoecker.[59]

By foregrounding Möller's optimism regarding the capacity of eastern Jews to assimilate, the *AZdJ* sought to undermine the Prussian authorities' undifferentiated approach to the expulsions, which positioned all migrants from the east as a Slavic threat to *Deutschtum*. The paper repeatedly argued that Polish Jews were far more capable of assimilating into German society than into Russian society, and certainly far more capable of assimilating than separatist German Poles. Far from a burden, *Ostjuden* were hard-working and *kulturfähig,* untainted by Polish sympathies and capable of supporting the German *Kulturnation*. In a careful balancing act, the paper argued that while Jews were not the target of specifically crafted anti-Semitic measures, those Jews who were expelled as Poles were not deserving of their fate and constituted a lost opportunity for the German nation to populate

[55] *AZdJ* 13 October 1885, pp. 675–9.
[56] *AZdJ* 20 October 1885, pp. 693–4.
[57] *AZdJ* 20 October 1885, p. 695.
[58] *AZdJ* 3 November 1885, p. 726.
[59] *AZdJ* 1 January 1886, p. 6.

the east with loyal subjects.[60] Apart from relating the hardships of individual Jewish families, and the occasional report on the relief efforts of organizations such as the *Hilfs-Comité für die jüdischen Ausgewiesenen der Stadt Posen*,[61] this was as far as the *AZdJ*'s critique of the expulsion of Polish Jews went.

This is not to say that the paper was not critical of the mass expulsion measures *in toto*. In late 1885, the paper approvingly cited the *Frankfurter Zeitung*'s judgement that 'one does not in the end know what is the most monstrous part of the expulsions of Poles from the eastern provinces—the political measures and their travesty of humanity, or the circulation of myths clustered around them.'[62] It repeatedly pointed out that the expulsions were inhumane and not in accordance with the standards of civilization of which Germany was so ostentatiously proud. In early 1886, the paper declared that:

> Until now civilised states had seen it as a human right for people to reside and work in other states as long as they were not guilty of a crime. . . . It is legitimate for states to require identifying documents and to deport the morally dubious and criminals, not however to expel people *en masse* from their territory simply because they belong to a different nationality.[63]

This, it should be added, was a broadly left liberal critique rather than a confessional or sectarian one. It spoke to its core readership of left liberal German Jews. The expulsions were presented as inhumane and misguided, not because they were intrinsically anti-Semitic but because they were inconsistent with both the interests of the state and the legal norms of the modern *Rechtsstaat*. In April of 1886, the *AZdJ* attempted to make broader sense of events, again through a left liberal, humanist lens, with an article entitled '*Der Nationalitätenkampf*". Through a description of the heterogeneous origins of nineteenth-century European 'nation-states', as well as a critique of the Hobbesian *bellum omnium contra omnes* that underwrote national chauvinism, the article offered a plea for a moderate and cosmopolitan nationalism that respected national difference:

> Anyone looking at the states of Europe, even apart from their overseas possessions, would find that they all, with very few exceptions, house diverse nationalities within their territory. . . . History has thrown the nationalities together and bound the hitherto heterogeneous into a single polity. . . . There arises naturally from this the question of how the different and in particular the conquered peoples should be handled by these polities . . .
>
> In the middle of our century, the opinion spread that irrespective of how different the nationalities within a state were, the various parts of the population could be unified through a liberal constitution, which allowed all citizens the same rights and the same freedom to nurture their individuality, creating a peaceful unity. . . . This hope was soon disappointed. . . . And so we see today in many parts of the civilised world that nationalist sentiment is in full bloom but so too that nationalist hatred leads states into hostile antagonism with one another, as well as causing pervasive disputes within the state itself. . . . As much as nationality is natural, indispensable and

[60] *AZdJ* 1 January 1886. [61] *AZdJ* 20 November 1885, p. 691.
[62] *AZdJ* 24 November 1885, pp. 761–2. [63] *AZdJ* 26 January 1886, p. 67.

> assists the consciousness and sensibility, so too there comes a time when the passion for nationality becomes a general tendency and fervour, and becomes a retrograde step for humanity, justice, peace, and the welfare of the nations themselves. We can therefore only regard such a situation as the crisis from which the correct estimation, the balancing and fusion of 'humanity' with 'nationality' will follow.[64]

When the paper turned to institutional politics, the defiant stance of the *Reichstag* against the Prussian expulsions policy was also reported with admiration. Unsurprisingly given its editorial line, the paper supported the left liberal Albert Hänel's position that the grounds for the expulsions were Polish nationality rather than confession. Indeed, Hänel's argument was an important counterbalance for the paper in the face of the trenchant Centre Party claim that anti-Catholic religious chauvinism was the reason for the expulsions.[65] Notwithstanding its applause for the principled stance of the *Reichstag* majority, the paper remained unconvinced that this might bring about any material effects, understanding all too clearly that it was Prussian authorities, not the imperial government that had jurisdiction over the *Ausweisungen*. It also understood that the Prussian House of Deputies—the state legislature responsible for continuing or ending the expulsions—was dominated by Conservatives and National Liberals who wholeheartedly supported the measures.[66] Without any hope that it would halt the expulsion measures, the debate in the Prussian House of Deputies was simply used to buttress the paper's double argument that Polish Jews were suitable for assimilation in Germany, and that they were being deported not because of any intrinsic deficiencies, but rather because of their status as resident alien Poles. Picking up on Bismarck's assertion that Prussia could not overlook Jews and Protestants in its anti-Polish expulsion drive, the paper argued that 'anti-Semites can't claim that their hue and cry had led to the deportations, given that Polish Jews are only indirectly affected, and not because they are Jews, but because they come from Poland'.[67]

The *AZdJ* was consistent in its refutation of the charge that Jews were the target of the 1885–86 expulsions. Without being privy to internal government correspondence, the paper nonetheless correctly understood the case made by those coordinating policy at the state level in consultation with the frontier provinces; namely that Russian and Galician Jews were being expelled as Poles rather than Jews. As the paper surmised, Prussia's provincial and metropolitan authorities, as well as the Prussian and national legislatures were debating measures designed to halt the Polonization of Prussia by expelling non-citizen Polish residents, whether Catholic or Jewish. By September of 1885, the fact that expulsions of Poles included Jews as well as Catholics was well understood. Puttkamer and Bismarck had expressly discussed this reality. They had also made it clear that they were not interested in targeting Polish Jews *qua* Jews.

[64] *AZdJ* 27 April 1886, pp. 273–6.
[65] *AZdJ* 15 December 1885, pp. 816–17. See also 22 December 1885, p. 834.
[66] *AZdJ* 26 January 1886, pp. 67–9.
[67] *AZdJ* 9 February 1886, pp. 99–100. See also *AZdJ* 16 February 1886, p. 119.

A decade after the expulsions, however, not everyone was as convinced as the *AZdJ* had been at the time that Jews did not suffer disproportionately during the 1885–86 expulsions. When Prussia's eastern expulsions of the mid-1880s appeared set to be reactivated in the mid-1890s, the Jewish journalist and religious scholar Max Albert Klausner wrote to Prussia's Minister-President Chlodwig zu Hohenlohe-Schillingsfürst, vigorously objecting to what he saw as the continuation of Prussia's earlier persecution of eastern Jewry:

> The mass expulsions of a decade ago and which seem to be threatened once again were aimed at foreigners in general without reference to the followers of a particular religion. It was particularly stressed, that the moves were aimed at national security and absolutely not at a particular religion such as the Jewish one. The same should apply today. Yet today, as then, it will be my coreligionists that will be primarily afflicted by the more stringent measures. Nothing will hinder that the weight of the facts demonstrate more forcefully than any intangible negation that measures taken for the security of the nation are primarily directed against those of the Jewish confession in their application.[68]

Klausner's 1896 complaint regarding Prussia's history of mass expulsions stemmed from the renewed push from frontier eastern provinces to expel Austrian and Russian subjects. Crucially, Klausner saw lines of continuity between those targeted for expulsion in the 1890s and those targeted in the 1885–86 *Massenausweisungen*. In the 1890s, however, there were a few differences. Silesia was the initial locus of the renewed push for expulsion measures and instead of the plans being confined to Polish Catholics and Jews, the new proposal argued that Czechs and Moravians should also be included within the definition of undesirable foreign Slavs. This push began in 1894 after a regional controversy broke out when the *Oberpräsident* (provincial governor) Otto Theodor von Seydewitz in Breslau sent a query to Berlin, requesting clarification on the issue of how broad the existing powers of expulsion actually were. The reason for this was that the *Regierungspräsident* of Oppeln had decided that not only Russia and Galicia's Catholic and Jewish Poles represented a threat to the local demographic balance, but also Czechs and Moravians.[69] The hitherto prevailing wisdom in Breslau, however, was that only Poles were covered by the laws:

> The Royal *Regierungspräsident* of Oppeln considers . . . a halting of the immigration of Moravians and Czechs to Upper Silesia as necessary. He asked me which processes are to be observed in preventing this increase in the Slavic element. Given that the majority of these foreigners do not fall under the expulsion provisions erected to deal with Polish-Russian immigrants, the view has hitherto been taken that the residency

[68] Klausner went on to argue that Jews were a Germanizing segment of the Prussian population and that, far from coming as penniless migrants, they brought with them a substantial amount of capital to invest in Germany, as well as a desire to assimilate. On the other hand, should they be expelled from regions that have long been their homes, they could only become carriers of a hatred for Germany. Max Albert Klausner, 22 January 1896 in BA Berlin R43/676 *Ein und Auswanderung, Ausweisung und Staatsangehörigkeit*, pp. 1–2.

[69] There is also evidence to suggest that Croatian and Slovakian migrant workers were being expelled elsewhere. See BA Berlin R901/30103.

> here of each foreigner can only be lost in the individual case if the individual demonstrates that they are a burden and cannot identify themselves.[70]

Seydewitz also pointed out that the original 1885 provisions might conceivably be stretched to cover other nationalities. Drawing on the 1885 case of including non-Polish speaking Jews within the category of unwanted Poles, Seydewitz reasoned that the expulsion regulations should now be reactivated and also include Moravians and Czechs:

> The assessment of the permission for entry for border crossers from Austria and Russia—apart from Polish nationals—was also to focus on whether the further granting of residency for each individual could be considered unobjectionable from a social, economic and political standpoint. It was further stipulated as highly desirable to proceed with expulsion measures early. . . . This point of view was to be considered primarily with reference to the expulsions of non-Polish speaking Jews hailing from Russia and Galicia. In light of the public interest and to support the endeavours being made to further Germandom, in my opinion the same principles are also to be applied to all foreigners speaking Moravian and Czech. . . . I might here assume that broader expulsion measures of non-Polish speaking Jews from the mentioned provinces could possibly be applied, given that the strengthening of the Jewish element is to the detriment of the interests of Upper Silesia.[71]

Demonstrating that the frontier was more radical than the centre, by the time Undersecretary for Foreign Affairs Wolfram von Rotenhan discussed Seydewitz's letter with the Interior Ministry, Jews had dropped out of the equation and the question had narrowed to the question of Moravians and Czechs, with Rotenhan commenting to the Prussian Minster-President Botho zu Eulenburg, 'I have no objections if the governor of Silesia is authorised to apply suitable measures of the suggested scope to stop the infiltration of Moravian and Czech elements into Silesia.'[72] This renewed expulsion policy got underway in September 1894, with Seydewitz, however, expressly reinserting reference to the widening of expulsions and denials of entry so as to include Jews.[73]

Three years after the Prussian Foreign Office had authorized the expulsion of Austrian Czechs and Moravians, new localized expulsions targeting Jews in Königsberg came to its attention in 1897. Interestingly, the Foreign Office noted that the primary source of the pressure on the governor there to intensify the expulsions and tighten border security measures had come not from Berlin, but rather from the Chamber of Commerce in Königsberg, which had warned against permitting the entry of competing Jewish merchants and petitioned for a stiff regime of protectionist border controls.[74] Once again, however, any explicitly anti-Semitic plan to implement a blanket expulsion policy was rejected by the

[70] Seydewitz, 25 June 1894 in GStAPK Rep 77 Tit 1176 Nr 9.
[71] Seydewitz, 25 June 1894 in GStAPK Rep 77 Tit 1176 Nr 9, pp. 1–2.
[72] Rotenhan to Eulenberg in GStAPK Rep 77 Tit 1176 Nr 9, p. 5.
[73] Seydewitz, 28 September 1894 in GStAPK Rep 77 Tit 1176 Nr 9, p. 8.
[74] Report, 16 October 1897, BA Berlin, R43/676 *Ein und Auswanderung, Ausweisung und Staatsangehörigkeit*, pp. 27–30.

Foreign Office which argued that 'an expulsion of foreigners simply because they are Jews would be difficult to justify; it must be assumed from the reports of the governor in Königsberg that the expulsions have occurred because those affected have made themselves burdensome or threaten to become a burden'.[75] A year later, however, the Prussian Foreign Office had become increasingly concerned about the cumulative effect of the growing number of expulsions of Habsburg subjects. On 18 November 1898, it issued a directive seeking to slow the process of purging the borderlands of non-citizens, demanding that 'insofar as it is possible, a milder practice is to be observed; that is, mass expulsions are to be avoided as is the removal of those who have lived here for numerous years or have found employment where the settlement of foreign elements seems less objectionable.'[76]

By this time, Czech politicians in Vienna had already signalled their outrage at Prussia's treatment of 'Austrian citizens of Slavic nationality'.[77] Less than a fortnight later, it was evident that the Prussian Foreign Office's attempt to halt the expulsions was too little too late, when on 29 November 1898, the Austrian Minister-President Count Franz von Thun und Hohenstein launched a very public anti-Prussian tirade. In a staged question about the upswing in the numbers of expulsions from Prussia, deputies from the Czech and Polish parties in the Austrian *Reichsrat* asked what might be done to rectify the situation. In ominous tones, Thun undertook to investigate whether the Prussian measures went beyond the expulsion of particularly irksome individuals. If they did, he warned, Prussia could expect retaliatory expulsions:

> We hold these expulsions in their manner and scale, as they were begun by Prince Bismarck and as they have been partially reinstated again in recent days, to be misconceived, unnecessary and damaging. We see neither reasons of state nor considerations of domestic peace that might excuse this policy. Germandom is nowhere seriously threatened by a handful of foreigners, whether by Danes or Poles or French or Slovaks. If Germandom can only defend and sustain itself through the expulsion of a few hundred mostly unimportant people, than that would be a poor reflection on its inner strength.[78]

Seemingly unmoved, the German ambassador in Vienna, Philipp zu Eulenburg, opined that the speech indicated the extent to which the Slavic parties, under the leadership of Agenor Maria Gołuchowski, were in the ascendancy in the Habsburg

[75] Report, 16th October 1897, BA Berlin, R43/676 *Ein und Auswanderung, Ausweisung und Staatsangehörigkeit*, pp. 27–30. This does not omit the possibility that the Foreign Office was coaching the provincial governor in how to frame his rationale for expulsions in the future.

[76] 18 November 1898 in GStAPK Rep 77 Tit 1176 Nr 9, p. 9. Residual expulsions on a reduced scale nonetheless persisted up until World War One. See GStAPK Rep 77 Tit 1176 Nr 9, pp. 156–8.

[77] *Vossische Zeitung* 17 November 1898.

[78] *Vossische Zeitung* 30 November 1898 in GStAPK Rep 77 1176 4 adh1, p. 6. See too GStAPK Rep 77 1176 4 adh1 reports in the *Kölnische Zeitung* 30 November 1898; *Kreuz-Zeitung* 30 November and 1 December; *Staatsbürger Zeitung* 30 November, *Berliner Neueste Nachrichten*, 1 December; *Berliner Tagesblatt* 1 December, 5 December; *Allgemeine Zeitung* 1 December; *Frankfurter Zeitung* 1 December; *Berliner Zeitung* 1 December; *Leipziger Tagesblatt* 1 December; *Deutsche Zeitung* 2 December; *National-Zeitung* 2 December; *Magdeburgische Zeitung* 3 December; *Schlesische Zeitung* 7 December.

Empire and how much Thun relied upon them. Eulenburg expressed surprise that Gołuchowski, had come out so sharply against the expulsions publicly, when he had appeared in diplomatic discussions to understand that the Prussian position on controlling the Polish element within the border provinces of Prussia was necessary. That said, Eulenburg surmised that it was Thun and not Gołuchowski who had thought to threaten Germans within Austria with retaliatory repression measures.[79]

In the *Reichstag*, Thun's threat was met with surprise, with even the progressive liberal Eugen Richter arguing that the expulsions did not appear to him '*a priori* unjustified' but in light of the threat from a *Dreibund* ally, it perhaps warranted clarification from the foreign secretary.[80] Foreign Secretary von Bülow moved quickly to reassure the *Reichstag*, that despite Thun's speech suggesting that the sovereign acts of Prussia in expelling Austro-Hungarian citizens had strained relations, the *Dreibund* and further Austro-German links were not in any serious danger. Nonetheless, Bülow did not miss the opportunity to lecture Thun on ministerial etiquette, advising that he would keep his remarks brief, as 'a minister should only make remarks regarding insignificant divergences between friendly and allied powers publicly in a conciliatory spirit, after thorough consideration and precise weighting of the significance of his words'.[81]

Notwithstanding Bülow's reassurances, the National Liberal Party complained that the sharpness of Thun's criticism had sparked a crisis that might threaten the *Dreibund*.[82] For its part, the Polish Party welcomed Thun's intervention and decried the expulsions, explicitly linking them to similar expulsions against Danish, French, and Dutch citizens.[83] More bellicose was the suggestion of the *Reichspartei* deputy, Wilhelm von Kardorff, who saw in the crisis grounds for ending the delay in passing the pending budgetary bill for the German military,[84] an argument which the left liberal Heinrich Rickert reasoned was an irrational 'declaration of war' that showed a particular lack of caution. 'The sabre should not be so quickly rattled', Rickert reasoned, when the *Dreibund* was in no serious danger.[85]

Like the years 1885–86, the decade preceding the Count Thun crisis demonstrates the extent to which the question of Jewish immigration into Germany, while present, was very much subsumed by the primary threat to the empire identified in the Prussian east; namely a perceived wave of 'Slavic', in particular Polish migration. While Jews were certainly viewed by some provincial officials in Silesia and Königsberg as undesirable residents and economic competition to Germans living in the region, such sentiments were either expressly corrected or ignored by

[79] Franz Adlgasser and Margret Friedrich (eds), *Heinrich Friedjung: Geschichte in Gesprächen, Aufzeichnungen 1898–1919 (Bd I)* Böhlau Verlag, Wien, 1997, pp. 203–4.
[80] Richter, *Verhandlungen des Reichstages*, 12 December 1898, p. 26.
[81] Von Bülow, *Verhandlungen des Reichstages*, 12 December 1898, p. 38.
[82] Bassermann, *Verhandlungen des Reichstages*, 13 December 1898, pp. 49–50.
[83] Motty, *Verhandlungen des Reichstages*, 13 December 1898, p. 64.
[84] Von Kardorff, *Verhandlungen des Reichstages*, 14 December 1898, p. 70.
[85] Rickert *Verhandlungen des Reichstages*, 14 December 1898, p. 77.

the Prussian Foreign Office. Instead, the administrative focus continued to be on the undesirability of eastern 'Slavs', in particular Poles from Russia and Austria, and later Czechs and Moravians from Austria. Where Jews were discussed it was as a confessional sub-segment of a broader group identified in national terms; namely as 'Poles'.

Anti-Semitic discourse was clearly unexceptional in Germany between the late 1870s and the mid-1890s. Within limits, it informed the empire's hardened stance on the naturalization of impoverished transmigrants en route to destinations west, in particular North America. This anti-Semitism, however, did not stretch so far as to motivate the mass expulsions in the Prussian east during the 1880s and 1890s, which had their roots in the fears of Polonization. The fine but critical distinction that needs to be made is between the mass expulsion of non-citizens that directly affected tens of thousands of Jews and mass expulsions of non-citizens that specifically targeted Jews *qua* Jews.

6

The Legacy of Gravenstein

Expelling the Danes from Schleswig

On a summer evening in 1898, the Schleswig miller Niels Hansen celebrated his wedding with friends and family in his home in Norberg, Sonderburg. Amongst the guests were both German and Danish speakers and, as the evening wore on, the bilingual singing began. Alongside the Danish standards 'The Brave Soldier', and 'King Christian Stood by Towering Mast', German nationalist classics such as the 'The Watch on the Rhine', 'I Am a Prussian, Knowest Thou My Colours?' and the local anthem 'Schleswig-Holstein Embraced by Sea' were sung. Not all of the guests, however, had come to wish the bride and groom well, with the Sonderburg district authorities also having sent along a police observer to Hansen's house to monitor the private celebration. As a result of the report from this unwanted guest, which detailed the singing of Danish songs at the nuptials, Hansen and some of his Danish guests were prosecuted and fined sixty marks under an 1865 law forbidding such public acts of Danish 'agitation'.[1]

As draconian as the monitoring of weddings for seditious singing appears, Hansen and his guests were not among those worst affected by Prussian attempts to find a solution to the Danish question. A product of the territorial expansion enabled by the Austro-Prussian victory over Denmark in the 1864 war, the attempted forced assimilation of the Danish minority had pitted Danish and German nationalists in the region against one another. With grassroots activists on both sides decrying the chauvinism of the other, local authorities had incrementally intervened with a series of repressive measures against Danish nationalists.[2] Much like in the Polish East, these measures consisted of a gradual tightening of regulations surrounding the use and teaching of Danish in schools, in newspapers and on the stage, prohibitions on Danish financial institutions, and Danish (most notably Grundtvigian) forms of religious activity. Eventually, however, state

[1] As related by Theodor Barth, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1) 25 January 1899, p. 144. See too Lenzmann, *Verhandlungen des Reichstages*, 18 February 1899, pp. 954–7.

[2] The classic overviews of Prussia's anti-Danish policies include Troels Fink, *Geschichte des schleswigschen Grenzlandes* (trans. E. Bernstorff), Ejnar Munksgaard, Copenhagen, 1958; Oswald Hauser, *Preußische Staatsräson und nationaler Gedanke*, Karl Wachholtz Verlag, Neumünster, 1960; Kai Detlev Sievers, *Die Köllerpolitik und ihr Echo in der deutschen Presse 1897–1901*, Karl Wachholz Verlag, Neumünster, 1964. Contemporaneous discussions include the influential Mouritz Mackeprang, *Nord-Schleswig von 1864–1911*, Eugen Diedrichs, Jena, 1912 and Johannes Tiedje, *Die Zustände in Nord-Schleswig*, Verlag der Christlichen Welt, Marburg, 1909.

pressure on the Danes took the shape of expulsions aimed at removing or financially crippling those deemed most troublesome amongst the Danish population.

A primarily cultural and political nationalist dispute, the Danish question has at times been seen in ethnic, even racial terms. In his otherwise outstanding study of the issue, Eric Kurlander has suggested that the Danish–German frontier dispute should be seen in terms of a *völkisch* binary, as 'a daily struggle between Germans and Danes for ethnic and political survival'.[3] While Kurlander's description of the borderland conflict in terms of a struggle for the survival of Danish political nationalism in Germany is certainly apt, the reference to 'ethnic survival' seems more problematic, given the dearth of evidence for a plan to eradicate ethnic Danes instead of merely reorienting their political consciousness away from Copenhagen. Similarly, in a work which otherwise amply illustrates the blurred lines of identification in the *Nordmark*, the German and Danish communities figure as 'ethnic' communities in the analysis of Peter Thaler.[4] What seems preferable, however, is to call them what they called themselves, that is 'nationalities' who saw themselves not in terms of a distinctive primordial *ethnos*, but rather in terms of belonging to a broader national community defined by custom, language, loyalty to a particular sovereign, and religion. What was at stake was national consciousness and its relationship to citizenship within a nation-state (*Nationalbewußtsein, Staatsangehörigkeit*) rather than a primordial ethnic identification (*Volksangehörigkeit*).[5] Treading carefully between the distinction between political and biological forms of life (*bios* and *zoē* in Agamben's terminology)[6] is crucial in this episode and inscribing upon Schleswig-Holstein's regional struggle for national affiliation the moniker '*völkisch* particularism' and rendering the political engagement of those in the region as being based upon a preoccupation with the 'Germanic race (*Stamm*)' and '*Blut und Boden*' perhaps unnecessarily pushes what was a debate regarding the position of national borders and freedom of cultural expression towards an entirely separate (and absent) question of biological essence.[7] As the following illustrates, the main preoccupations of both German and Danish nationalists (even chauvinists) in the region appear to have been linguistic and nationalist-affiliative rather than ethno-biological. As Kurlander elsewhere (and far more persuasively) suggests,[8] the question was not one of essentialist racial chauvinism but of competing nationalist passions in a liminal borderland context which could potentially be overcome through persuasion or coercive legal measures.[9]

[3] Eric Kurlander, 'Multicultural and Assimilationist Models of Ethnopolitical Integration in the Context of the German *Nordmark*, 1890–1933', *Global Review of Ethnopolitics*, 1(3), 2002, p. 39.

[4] Peter Thaler, *Of Mind and Matter: The Duality of National Identity in the German-Danish Borderlands*, Purdue University Press, West Lafayette, 2009.

[5] On these differentiations, see Ulrich K. Preuss 'Citizenship and the German Nation', *Citizenship Studies* 7(1), 2003, pp. 37–55.

[6] Giorgio Agamben, *Homo Sacer. Sovereign Power and Bare Life* (trans. D. Heller-Roazen), Stanford University Press, Stanford, 1998, pp. 1–2.

[7] Eric Kurlander, *The Price of Exclusion. Ethnicity, National Identity and the Decline of German Liberalism, 1898–1933*, Berghahn, 2006, pp. 22–3.

[8] Kurlander, *The Price of Exclusion*, pp. 27–8.

[9] When the Danes moved towards political accommodation with the Reich with the 1907 Optant Convention, for example, Kurlander admits that no inherently *völkisch* objections stymied their apparently new-found German nationalism. Kurlander, *The Price of Exclusion*, p. 29.

This splitting of the ethnic/civic nationalist hair may seem trivial, but it goes right to the heart of the dispute in Schleswig-Holstein, because it was the intricacies of citizenship, nationality, and sovereignty, rather than twentieth-century concerns with race and biology that led to the expulsions from the region. As Theodor Brix, a contemporary critic of the expulsions, made explicit, the *Nordmark* question of the 1890s was essentially a question of ongoing provincial integration and pacification necessitated by the Prussian imperialism of the 1860s on the one hand, and the hypertrophic growth of the nationalism of Schleswig Danes, provoked by the limitations placed on Danish language and culture by the Prussians in 1888, on the other.[10]

At its point of origin, the *Nordmark* dispute was the product of the settlement arrived at the conclusion of the Second Schleswig War of 1864 between Austria-Prussia and Denmark. Specifically, two clauses from two separate international treaties lay at the heart of the political grievances of Danish nationalists. The first one was Article XIX of the Treaty of Vienna, signed on 20 October 1864.[11] In this, the citizenship status of those within the newly annexed Danish territories was managed in a seemingly flexible manner, enabling the inhabitants of Schleswig-Holstein to choose whether they wished to retain Danish citizenship or claim Prussian citizenship. This new subsection of the German population—the so-called Danish 'optants' (*Optanten*)—became, however, a minority particularly vulnerable to expulsion, especially if they claimed Danish citizenship but continued to live and hold property in Prussian Schleswig (as Article XIX allowed).[12] Under the terms of the 1872 Optant Convention of Apenrade, those who opted for Danish citizenship were permitted to continue to reside in their Northern Schleswig homes, providing that they were not deemed to be 'burdensome'. Over time, the term 'burdensome' (*lästig*) proved to be a very elastic one and came to be used in the 1890s as the primary stated grounds for expelling politically active optants and their employees. Compounding the

[10] Theodor Brix, *Der nationale Grössenwahn und der Kampf mit der Dänen: Eine Kritik von Chauvinismus und Weltpolitik*, Kommissionsverlag von Imberg & Lefson, Berlin, 1899, pp. 5–13.

[11] The text of Article XIX was cited by Gustav Johannsen in the *Reichstag* debate of 16 February 1899, *Verhandlung des Reichstages* Vol 165, 1898/1900, p. 918. 'Jenen Unterthanen welche auf den durch gegenwärtigen Vertrag abgetretenen Gebieten ihren Wohnsitz haben, sollen von dem Tage ab, an welcher die Ratifikationen ausgewechselt werden, während der Dauer von 6 Jahren und gegen eine an die kompetente Behörde in vorhinein abzugebende Erklärung die volle und unbeschränkte Befugniß zustehen, ihre beweglichen Güter abgabenfrei in die Staaten Seiner Majestät des Königs von Dänemark auszuführen und sich selbst mit ihren Familien dahin zurückzuziehen, für welchen Fall ihnen die Eigenschaft dänischer Unterthanen aufrecht erhalten bleibt. Es steht ihnen frei, ihre in den abgetretenen Gebieten gelegenen unbeweglichen Güter zu behalten. Derselben Befugniß erfreuen sich auch wechselseitig die dänischen Unterthanen und jene Individuen, welche von den abgetretenen Gebieten herstammen und sich in den Staaten Seiner Majestät des Königs von Dänemark angesiedelt haben. Jene Unterthanen, welche der gegenwärtigen Bestimmung theilhaftig werden wollen, dürfen auf Grundlage ihrer freien Wahl von keine Seite weder an ihrer Person noch an ihren in den befindlichen Staaten belegenen Besitzungen beunruhigt werden. Das Recht des Indigenates sowohl im Königreich Dänemark als in den Herzogthümern bleibt allen denjenigen Individuen bewahrt, welche dasselbe zur Zeit der Ratifikationsauswechselung des gegenwärtigen Vertrages innehaben.'

[12] Fink, *Geschichte des schleswigschen Grenzlandes*, p. 162.

anxiety of optant Danes was the fact that the children of optants were also left officially stateless because of the incongruities of Danish and German citizenship law. With Germany adhering to the legal precept of *ius sanguinis* (descent-derived citizenship) and Danish law based upon the concept of *ius soli* (territorially-derived citizenship), the children of Danish optants simply fell through the cracks.[13] This precarious political existence of the children of optants endured until the Optant Convention of 1907, which finally allowed the children of Danish optants to apply for German citizenship.

The second international treaty that underwrote the agitation of Schleswig's Danes was the 1866 Peace of Prague ending the Austro-Prussian War. Updating the Treaty of Vienna, Article V of the Peace of Prague promised a plebiscite to the people of North Schleswig, in order that they might definitively decide whether these borderlands would belong to Prussia or Denmark.[14] Danish nationalists within North Schleswig consistently agitated for this article to be implemented in the expectation that they would be reunited with Denmark, however in April 1878 a peculiar thing had happened. Under pressure from Russia in the Balkans after the Russo-Turkish War and the subsequent Treaty of San Stefano, Austria looked to Prussia for diplomatic support. Against the backdrop of an overwhelming *Reichstag* majority demanding that Bismarck set aside his Russophile tendencies and side with Austria in any negotiations over the Balkans,[15] Bismarck duly granted Austria the support of Germany, on a *quid pro quo* basis. Bismarck's request in return was that Austria agree to terminate the plebiscite provisions for Schleswig in Article V of the Peace of

[13] Lothar Blatt, *Die rechtliche Behandlungen der dänischen Minderheit in Schleswig-Holstein von 1866 bis 1914 unter besonderer Berücksichtigung der Rechtsprechung des Königlich Preußischen Oberverwaltungsgerichts*, MatthiesenVerlag, Husum, 1980, p. 71. Wolfgang Wipperman sees in *ius sanguinis* an ominous harbinger of the 'future of the Third Reich', however, there is nothing intrinsically biologically racist about using the citizenship status of parents as a benchmark for the citizenship of their offspring if the citizenship of the parents is a product of their belonging to a region or state, and not a product of belonging to a particular 'race'. Race was clearly not an issue (outside of the German colonies), given that a woman of any nationality could claim the citizenship status of her German husband once married. On the other hand, the patrilineal nature of the empire's citizenship laws meant that German women theoretically lost their citizenship if they married a non-German man. See Wolfgang Wipperman, 'Das "ius sanguinis" und die Minderheiten im Deutschen Kaiserreich', in Hans Henning Hahn and Peter Kunze (eds), *Nationale Minderheiten und Staatliche Minderheitspolitik im Deutschland im 19. Jahrhundert*, Akademie Verlag, Berlin, 1999, p. 140.

[14] Article V of the Peace of Prague stated 'Seine Majestät der Kaiser von Oesterreich überträgt auf Seine Majestät den König von Preußen alle Seine im Wiener Frieden vom 30. Oktober 1864 erworbenen Rechte auf die Herzogthümer Holstein und Schleswig mit der Maßgabe, daß die Bevölkerungen der nördlichen Distrikte von Schleswig, wenn sie durch freie Abstimmung den Wunsch zu erkennen geben, mit Dänemark vereinigt zu werden, an Dänemark abgetreten werden sollen', *Verhandlung des Reichstages* Vol 165, 1898/1900, p. 918.

[15] For the pro-Austrian position of the National Liberals, the Left Liberals, the Centre Party and the Social Democrats, see *Verhandlungen des deutschen Reichstags* III. Legislaturperiode. 6.Sitzung, 19 February 1878, pp. 92–112. See too Mathew P. Fitzpatrick, '"Ideal and Ornamental Endeavours": The Armenian Reforms and Germany's Response to Britain's Imperial Humanitarianism in the Ottoman Empire, 1878–83', *Journal of Imperial and Commonwealth History* 40(2), 2012, pp. 189–91.

Prague. Austria agreed to this condition and with this the hopes of irredentist Danes under Prussian rule were crushed.[16]

After the initial deflation that followed this diplomatic fait accompli, Schleswig's Danes rallied behind a number of nationalist goals. Their primary demand was the reinstatement of Article V from the Peace of Prague, however they also called for a guarantee of their freedom of language and freedom of cultural expression; emblematic issues seen as central to keeping Danish national consciousness alive in the interim.[17] This focus on cultural forms of resistance to assimilation became particularly urgent after the number of hours for Danish language school lessons was forcibly reduced to six per week (for the purpose of religious instruction only) in mid December 1888.[18] This reduction was a result of the belief of the local governor and his county authorities (*Landräte*) that a Germanizing language policy was central to quelling Danish nationalism.[19] According to the North Schleswig pastor and politician Johannes Tiedje, it was this provocative regulation of bilingual education which inflamed nationalist passions, ending any hope of political reconciliation.[20]

The newly invigorated Danish nationalist movement was also nourished by the Danish government, which consistently maintained a policy in favour of self determination in North Schleswig as per the Peace of Prague.[21] Within Germany, Danish language newspapers and the Danish Party were significant forces keeping Danish irredentism in North Schleswig alive, despite the Danish Party's overall share of the vote in the province trending downward over the long term.[22] Its vote was concentrated in the frontier electorate of Hadersleben, the electorate of Gustav Johannsen, founding editor of a Danish language newspaper, the *Flensborg Avis*. It was in this electorate that electoral results reacted far more obviously in response to changes in Prussia's Danish policy than in Schleswig-Holstein more generally. There was, for example, a discernible rise here in the vote for the Danish Party in 1890, 1893, and 1898, after decades of gradual decline, as the effects of the implementation of a stricter German language regime in schools became evident.[23]

[16] Aage Friis, 'Die Aufhebung des Artikels V des Prager Friedens', *Historische Zeitschrift* 125(1), 1922, pp. 45–62; Martin B. Winckler, 'Die Aufhebung des Artikels V des Prager Friedens und Bismarcks Weg zum Zweibund', *Historische Zeitschrift* 179(3), pp. 471–509.

[17] Oswald Hauser, 'Obrigkeitsstaat und demokratisches Prinzip im Nationalitätenkampf', *Historische Zeitschrift* 192(2), 1961, pp. 318–61.

[18] 'Anweisung für den Unterricht in den nordschleswigschen Volksschulen', *Amtsblatt der Königlichen Regierung zu Schleswig*, 22 December 1888 in LA Schleswig-Holstein 301 Nr 2875, p. 180.

[19] 'Betrifft Maßnahmen auf der Gebiet der Schule zur Begegnung der dänischen Agitation', 27 August 1884 in LA Schleswig-Holstein, 301 Nr 2875, pp. 55–61. See here too the Denkschrift from 18 November 1884, spelling out the need for increased German language instruction, pp. 7–40.

[20] Tiedje, *Die Zustände in Nord-Schleswig*, pp. 29–32.

[21] Hauser, 'Obrigkeitsstaat und demokratisches Prinzip im Nationalitätenkampf', pp. 325–7.

[22] Although the 1871 *Reichstag* election saw 23 per cent of Schleswig-Holstein voting for the Danish Party, this figure was more than halved by 1877 (11.5 per cent). By 1907, just over 5 per cent of voters in Schleswig Holstein voted Danish. Thaler, *Of Mind and Matter*, p. 78.

[23] This did not go unnoticed in the *Reichstag*. Albert Hänel of the left liberal *Deutschfreisinnige Partei* accused the Prussian government of setting back the move away from the Danish Party by

Schleswig's rival nationalisms continued to fester at the grassroots level until the expulsions of 1898. On the German side, local officials and newspapers consistently pushed for not mere increased policing of existing anti-Danish legal measures, but an increased severity for Danish nationalists. The 1894 petition of seventy-seven North Schleswig pastors to the Prussian *Kultusminister* Robert Bosse for more flexibility in language matters, for example, not only fell on deaf ears but also met with a vitriolic response in the German press.[24] At the level of local officialdom, requests by optant Danes to be naturalized throughout the 1890s were not assessed on the intrinsic worth of the application, but on the electoral conditions of their region, with many refused on the grounds that they were known to be sympathetic to the Danish Party, or 'suspected Danish agitators'. This was made clear in a discussion paper of August of 1893, which outlined how in regions where nationalist German candidates were threatened by a growing Danish vote, suspicions of politically motivated entryism by Danish optants led local authorities to explicitly consider the link between naturalization requests and potential future electoral results before granting citizenship.[25] Consequently, Danish submissions for German citizenship were regularly denied on political grounds.[26] Over time, this link between the preponderance of nationalist Danes and negative electoral outcomes for German nationalists would be radicalized beyond stymying citizenship applications towards expelling Danish citizens.[27]

The local German press too fanned the fires, with the *Hamburgischer Correspondent* at the forefront, lamenting in February of 1897 that the German population of North Schleswig 'cannot shake from itself the yoke of Danish agitation'—agitation that the newspaper claimed was far more intensive and ruthless than that of the Poles.[28] In July 1897, the same newspaper denounced what it saw as a scandalous lack of action against Danish agitators, demanding wholesale expulsions and the sacking of any agitators in government employ.[29] When a

twenty years by engaging in the suppression of the Danish language. Albert Hänel, *Verhandlungen des Reichstages* Bd 165, 1898/1900, 35. Sitzung, 17 February 1899, p. 930. Hänel cites the electoral figures for the Danish Party in Hadersleben as being 1871—12,408, 1874—11,931, 1877—10,695, 1878—9,991, 1881—9,124, 1884—8,375, 1887—8,510, 1890—8,707, 1893—9,587, 1898—10,421. His fellow left liberal Julius Lenzmann agreed, stating that the figures demonstrated that 'the tougher the demeanour, the greater the growth in votes [for the Danish Party], the milder the regiment, the fewer the numbers of Danish votes, which means that the assimilation of Danes into Prussia is appreciably assisted by liberality rather than severity'. Julius Lenzmann, *Verhandlungen des Reichstages* Bd 166, 1898/1900, 36. Sitzung, 18 February 1899, p. 959.

[24] Hauser, *Preußische Staatsräson*, pp. 132–40.

[25] 'Naturalisationsgesuche dänische Optanten, 1889–1893', 11 August 1893, in LA Schleswig-Holstein 301 Nr 2961.

[26] See for example the cases of Andreas Andersen and Hans Nissen, 29 June 1894, or that of Christian Christiansen, 9 July 1894, in LA Schleswig-Holstein 301 Nr 2962. On further use of electoral statistics to assess naturalization requests, see in the same file 'Stimmenverhältniß bei den Wahlen in der Stadt Sonderburg'.

[27] Mackeprang, *Nord-Schleswig*, p. 174. See also Fink, *Geschichte des schleswigschen Grenzlandes*, p. 173.

[28] 'Politisches aus Nordschleswig', *Hamburgischer Correspondent*, 18 February 1897, in LA Schleswig-Holstein 301 Nr 2212, p. 25.

[29] 'Die verbrüderungsfeste zwischen den Dänen und dänischegesinnten Nordschleswigern', *Hamburgischer Correspondent*, 2 July 1897 in LA Schleswig-Holstein 301 Nr 2212, pp. 141–2.

pro-Danish march was planned in June of 1897, the *Apenrader Anzeiger* similarly argued that it could be averted simply by issuing a warning that participation in the march by resident Danes would be viewed by the authorities as grounds for expulsion.[30] Other papers too, such as the *Flensburger Norddeutsche Zeitung* and the *Norddeutsche Allgemeine Zeitung* also protested in October 1897 against 'anti-German' Danish government support for Danish schools.[31] One writer to the *Hamburgischer Correspondent* called for what they called a Posen-style solution of establishing a fund to buy Danish properties.[32] By 1898, the paper was demanding that Prussia invest millions in actively supporting the 'colonization' of North Schleswig by German citizens so as to 'defend Germandom'.[33] The *Flensburger Norddeutsche Zeitung* also praised the benefits of the Settler Commission based in Rödding in mid-1898 and urged more Germans to settle there to assist in the Germanization of the region.[34] These fervent nationalist voices were not left uncontested, however, with the left leaning *Schleswig Holsteinische Volks-Zeitung* mocking the failure of the strict new Germanization measures in June of 1898, statistically demonstrating that it had merely led to a rise in the number of Danish Party votes in local elections since 1890.[35]

Both a source and audience for these newspapers was the trenchantly nationalist civil society organization, the *Deutscher Verein für das nördliche Schleswig*. Established in 1890, the professed role of this nationalist association, according to its press organ *Die Nordmark*, was to ensure that the inhabitants of the territory 'north of Flensburg to the Danish border were not merely Germans in their minds, but German in their hearts'. Dedicated to the fight 'against the work of pro-Danish agitators', the *Deutscher Verein* quickly became a vocal and often heeded lobby group that swayed the opinions of the media, the local *Landräte* and the governor.[36] As Kurlander has noted, the *Deutscher Verein* also managed to overcome the more usual ideological constraints to creating a non-partisan (*überparteilich*) civil society organization, with its membership drawn from left and nationalist liberals, as well as conservatives, a fact of which the association's leadership boasted.[37]

That some of Schleswig's left liberals were a part of this organization was certainly embarrassing for their fellow progressives at the national level, yet this local

[30] *Apenrader Anzeiger*, 15 June 1897 in LA Schleswig-Holstein, 301 Nr 2213, p. 240.

[31] *Norddeutsche Zeitung, Norddeutsche Allgemeine Zeitung*, 3 October 1897 in LA Schleswig-Holstein, 301 Nr 2213, pp. 317–18.

[32] *Hamburgischer Correspondent*, 17 November 1897 in LA Schleswig-Holstein, 301 Nr 2213, p. 439.

[33] *Hamburgischer Correspondent*, 8 October 1898 in LA Schleswig-Holstein, 301 Nr 2215, p. 388.

[34] *Flensburger Norddeutsche Zeitung*, 27 July 1898 in LA Schleswig-Holstein, 301 Nr 2215, p. 317.

[35] *Schleswig Holsteinische Volks-Zeitung*, 26 June 1898 in LA Schleswig-Holstein, 301 Nr 2215, p. 311.

[36] *Die Nordmark* 1(1), 15 February 1898, in GStAPK Rep 77, Tit 1176 Nr 3, Bd I, pp. 155–7.

[37] 'Ausweisungen aus dem nördlichen Schleswig', January 1899 in GStAPK Rep 77 Tit 1176 Nr 3 Bd I, p. 154. This was in the context of a petition to the Prussian government demanding that the expulsions continue and increase in intensity, received in January 1899.

liberal support is easily explained. Rather than being indicative of an intrinsically *völkisch* form of liberalism,[38] it demonstrated the extent to which nationalism in Schleswig was refracted through the prism of local frontier conditions. Foregrounding language, culture and the loyalty due to the nation by a citizen, rather than race, this frontier nationalism demanded that Danes assimilate, to begin considering themselves Germans, and thereby assuage German fears regarding the territorial or demographic integrity of the state. These concerns, of lower order value in far off Berlin, were of immediate concern to those on the Danish frontier, and consequently elicited a heightened response, including amongst left liberals.

As local nationalist agitation for decisive action against the Danes reached fever pitch in North Schleswig, a new governor (*Oberpräsident*) for the region, Ernst Matthias von Köller, was named. Köller's posting to Schleswig-Holstein has sometimes been portrayed as a deliberate and precisely calibrated step by Berlin to install a reliable and senior figure who would move to crush Danish nationalism. Certainly, the moderate *Kieler Zeitung* saw the appointment as a worrying sign of support for 'our chauvinists' who were pressing for harsher Germanization methods.[39] Even the German ambassador in Copenhagen assumed that Köller would attempt to bring the Danish Party to heel.[40] To be sure, Köller's appointment was welcomed by the nationalists of the *Deutscher Verein* as a timely intervention by Berlin. Yet the timing and nature of Köller's appointment is not as straightforward as it seems. Less an expression of the Kaiser's wish to pacify the region (as he remarked in the context of justifying his choice of Köller over other equally suitable candidates despite Chancellor Hohenlohe's objections), it was in fact a means by which the Kaiser could offer a suitably distinguished government post to a trusted confidante who had publicly disgraced himself as Prussian Interior Minister and required an honourable political exit from Berlin.[41] As a means of explaining his impending exile, Köller was rebranded by the Kaiser as a handpicked custodian of German interests on the northern frontier, just as he was being pushed out of Berlin, demoted, disgraced, and demoralized.[42]

Nonetheless, Köller's tenure as governor fulfilled the expectations of the region's German nationalists, when he oversaw the mass expulsions of Danish citizens, irrespective of their participation in nationalist politics. Köller also attempted to remove children from the custody of nationalist Danish parents under the provisions of Prussian family law.[43] During his period as governor, at least 1,000

[38] Contra Kurlander, *The Price of Exclusion*, pp. 26–8.

[39] *Kieler Zeitung*, 15 July 1897, in LA Schleswig-Holstein, 301 Nr 2212, p. 172.

[40] Foreign Office report to Interior Minister von der Recke, 16 August 1897 in LA Schleswig-Holstein, 301 Nr 2212, pp. 196–7. Where the German ambassador to Copenhagen noted that the German press foresaw that 'Herr Köller werden gegenüber der dänischen *Partei recht scharf* auftreten', von der Recke wrote in the margin 'ja das soll er' (text underlined by Recke).

[41] Sievers, *Die Köllerpolitik*, pp. 26–31, contra Erich Hoffmann, *Geschichte Schleswig-Holsteins VIII:2(2)—Das Nationalitätenproblem in Schleswig*, Wachholtz Verlag, Neumünster, 1995, p. 268.

[42] For a concise account of the leaking scandal that had discredited Köller and politically embarrassed the Kaiser, see Christopher Clark, *Kaiser Wilhelm II*, pp. 110–13.

[43] Mackeprang, *Nord-Schleswig*, pp. 174–9.

Danish citizens were expelled, while seventy-one optants were also deported.[44] The exact numbers were in fact much higher, as the expulsion order was addressed to adult male workers, as the patriarchal head of a family, when in effect the entire family of those with dependants often left with him.[45]

Optants with children who were being educated in Denmark also received letters demanding their children be recalled to Germany or they would face expulsion—a move that met with such staunch civil disobedience from parents that no children were recalled and the threat of expulsion was never carried out.[46] Perceived by many commentators to be a dramatic escalation of the state's attack on pro-Danish sentiment, at least one contemporary critic of Köller's policies described them as being characteristic of a state of exception (*Ausnahmezustand*) indicative of a more general deterioration in the rule of law in *fin de siècle* Germany.[47]

The expulsions were a clear case of the use of sovereign state power to radically transform the political and demographic dynamics of a national frontier. Crucially, however, the locus of this sovereign power was not the national centre of Berlin. Rather, it seems that extensive powers resided locally and, within certain limits, emanated from the grassroots. Even if the expulsions were eventually ratified by the Prussian *Landtag* and the *Reichstag*, the policy of *Massenausweisungen* was not one that originated in Berlin. Instead, persistent reports of provincial authorities resplendent with concerns regarding the growing 'threat to *Deutschtum*' posed by an increasingly self-conscious Danish minority had already established the sense of national threat that triggered the crackdown.[48] In this environment, the *Deutscher Verein* and the county commissioners (*Landräte*), particularly Carl Mauve of Hadersleben advised the new governor, Köller, soon after his arrival that a more vigorous stance against the Danes in the *Nordmark*, including the use of mass expulsions, was both appropriate and necessary.[49]

[44] Hoffmann, *Das Nationalitätenproblem in Schleswig*, p. 268.

[45] On this statistical problem, see the translated article from the Danish language newspaper *Heimdal*, 29 November 1898 in LA Schleswig-Holstein 301 Nr 2215, pp. 453–4.

[46] Fink, *Geschichte des schleswigschen Grenzlandes*, p. 175. The move was also condemned in the social democratic *Hamburger Echo*, 10 December 1898 in LA Schleswig-Holstein 301 Nr 2212, p. 47.

[47] Brix, *Der nationale Grössenwahn und der Kampf mit der Dänen; Theodor Brix, Nordschleswig und die Selbsterniedrigung Deutschlands. Ein Protest gegen den herrschenden Cours*, Hermann Walther Verlag, Berlin, 1902, p. 7.

[48] See for example the alarmist report on the capacity of Danish optants to influence the result of elections in favour of the Danish Party penned by Landrat Carl Mauve on 5 August 1893 in LA Schleswig-Holstein 301 Nr 2361, unnumbered.

[49] This accords with Mackeprang, *Nord Schleswig*, p. 175. 'Um die Agitatoren zu treffen, griff der Oberpräsident, nachdem er sich mit den nordschleswigschen Landräten (im besonderen Landrat Mauve in Hadersleben) und den leitenden Persönlichkeiten des Deutschen Vereins beraten hatte, zu den Massenausweisungen.' See too Hauser, *Preußische Staatsräson*, pp. 141–2, 162. See especially the *Deutscher Verein*'s 1904 assessment that 'die Verwaltungsbehörden seit Oberpräsident v. Köllers Zeiten den Grundsätzen des Deutschen Vereins gehuldigt…'. Erich Hoffmann argues that Köller has been unfairly blamed for the circumstances brought about by the continuous 'Druck verschiedener nationaler Zeitungen und auch des Vorsitzenden des "Deutscher Vereins", Dr Hahn. Auch erwiesen sich die Landräte Dr Mauve und Becherer (Hadersleben), sowie von Tschirnitz

Upon his arrival, Köller found that those in the region had some very clear ideas about the type of policy direction he should undertake. That the *Deutscher Verein* was an important source of Köller's approach seems undeniable. Johannes Tiedje, himself a German nationalist, had watched in dismay as the *Deutscher Verein* ultras had infiltrated the governing circles advising Köller. It had, he complained, 'increasingly won a sinister (*unheimlich*) intimacy with the highest officials'. Such 'German beer culture' was simply an unworthy vessel for a more inclusive German nationalism.[50] Theodor Brix too saw the *Deutscher Verein* as comparable to 'the American jingos' and pointed to their influence over political developments in the province,[51] accusing Köller's policies of being the 'fanciful product of chauvinism' betraying the '*idée fixe* of the German chauvinists in North Schleswig'.[52] Certainly the organization itself saw its relationship to the new governor as crucial, with its leadership praising him for supporting their 'endeavours to further *Deutschtum*' in North Schleswig.[53]

Although initially cautious when Köller first arrived, by September 1897, his immediate subordinate in Hadersleben, *Landrat* Mauve soon grew confident that Köller would be sypathetic to his more ambitious programme first formulated in 1891, which included the targeted economic measure of expelling the Danish employees of those politically active Danes who, by dint of their possession of Prussian citizenship, could not be deported. Drawing upon the advice and expectations of the *Deutscher Verein*, Mauve's lengthy and highly detailed September 1897 *Denkschrift* explicitly called for the expulsions of both Danish citizens and the Danish employees of politically active Danes with German citizenship. 'The population shall learn,' Mauve wrote, 'to come together in solidarity. If one commits a misdemeanour, all shall be punished until they learn by mutual education to control themselves.'[54] Circulated amongst the district authorities of Tondern, Apenrade, Sonderburg, and Flensburg in early October 1897, Mauve's plan listed ten grounds for expulsion, including expressing anti-German sentiment, taking part in a boycott of a German-owned business, sending children to a Danish school, offering accommodation to a pro-Danish agitator, as well as a number of offences related to joining, financing, or attending the meetings of pro-Danish associations.[55]

It was Mauve's crucial *Denkschrift* that eventually formed the basis for the discussions and decisions taken at the Gravenstein Conference on 29 September 1898, where the Schleswig *Landräte* von Tschirschnitz, von Uslar, and Mauve

[*sic*] (Sonderburg) in Handeln und Worten oft köllerischer als ihr Vorgesetzter.' Hoffmann, *Das Nationalitätenproblem in Schleswig*, p. 268.

[50] Tiedje, *Die Zustände in Nord-Schleswig*, pp. 34–6.

[51] Brix, *Der nationale Grössenwahn und der Kampf mit der Dänen*, pp. 14–15, 30.

[52] Brix, *Nordschleswig*, pp. 17–18.

[53] 'Der Deutsche Verein für das nördliche Schleswig', 7 Mai 1898, in LA Schleswig-Holstein, 301 Nr 2215, p. 232.

[54] LA Schleswig-Holstein, 301 Nr 2213; Sievers, *Die Köllerpolitik*, pp. 49–52. For Mauve's notion of collective punishment, see Mackeprang, *Nord-Schleswig*, p. 178.

[55] LA Schleswig-Holstein, 301 Nr 2213, p. 236c.

decided with Köller that mass expulsions should be the key to any state response to Danish agitation. The parameters of the expulsions agreed upon at Gravenstein were broad ranging, as the minutes make clear:

> Principles for Deportations (Classified!)
>
> Gravensteiner Minutes from 3.10.1898 (Governor von Köller)
>
> At the 29th September conference in Gravenstein chaired by the Governor, attended by the authorities (*Landräte*) of the areas Hadersleben, Apenrade, Sonderburg and Tondern, the following principles were agreed upon:
>
> 1) Foreigners, particularly optants and those born as Danes, who have taken part in excursions to Denmark *en masse* are to be deported, irrespective of class or gender. Only in very exceptional cases is this principle to be deviated from.
> 2) Similarly to be deported are those described in point one who have participated in any political demonstration. Any rally with the purpose of arousing Danish sympathies is to be seen as a political demonstration. Also deemed as a political demonstration and to be cause for deportation are rallies by associations that outwardly appear to serve socialising ends, but which, even if only covertly through their festivals awaken and nurture sympathies for Denmark through the unfurling of the Danish flag or other such means.
> 3) It remains the case that the local authorities inform and obtain the consent of the governor before any deportation of a political nature. The relelvant submissions will be treated by local authorities as urgent and to be dealt with within 24 hours. If necessary local authorities can receive the necessary permission . . . verbally.
> 4) The fact that foreigners (as per point one) living here send their children to Denmark for tertiary education or accept Danish children as holiday lodgers is in itself not grounds for deportation. Should these circumstances become known, the further relationships of the relevant foreigner are to be examined and should other negative facts come to light, they may be deported.
> 5) The practice of the past few months with regard to handling of the naturalisation of optants and Danes is to be retained.[56]
> 6) Germans who are particularly active in pro-Danish agitation and who display a particular enmity to Germany can have their employees deported as burdensome, unless these employees are German citizens. This authority can only be used by local police authorities with the express permission of the relevant local authority (*Landräte*) and is to be used only in the most serious of cases. Under no circumstances may a threat of deportation be made.

[56] That is, optants and Danes were not to be accepted as candidates for naturalization.

7) With regard to the naturalisation of optants and Danes who apply on the grounds of their military services, the practice of not reaching a decision on their naturalisation until a review of their military record has been completed is to be continued.[57]

Despite a trickle of earlier deportations, it was only once this unanimity had been reached between the district authorities and Governor Köller along the guidelines suggested a year earlier by Mauve that the mass expulsions got underway in 1898. In those numerous cases in which grounds for the expulsion were recorded, roughly 75 per cent of Danes reported as expelled were recorded as having become 'burdensome' (*lästig*) or sometimes more precisely 'burdensome due to agitation in the Danish cause ('*lästig gefallen durch Agitiren im dänischen Sinne*'). In about 15 per cent of cases, the reports specifically stated that they had been expelled because not they but their employers were pro-Danish agistators. The rest of the cases were recorded as simply a 'threat to the peace' or due to vagrancy. By December 1898, Hadersleben had stopped even supplying grounds for its expulsions.[58]

Unsurprisingly, the new measures were noted with approval in the local nationalist German language press,[59] such as the National Liberal papers the *Itzehoer Nachrichten* and *Hamburgischer Correspondent* as well as the *Deutscher Verein* mouthpiece *Die Nordmark*. Even the distant *Leipziger Neueste Nachrichten* approved of the measures as a means of dealing with the putative threat of closed Danish language communities that were resistant to all attempts at Germanization.[60] Equally unsurprisingly, Danish language papers such as the *Flensborger Avis* savaged the measures.[61] German liberal papers such as the *Vossiche Zeitung* also criticized the expulsions, sardonically characterizing the measures as a 'war against Danish housemaids'.[62] The left liberal *Kieler Zeitung* proclaimed that 'the entire manner of these recent expulsions is so draconian, that the matter requires thoroughgoing discussion. It is for us beyond doubt, that these measures are indeed suitable for breeding fear, but certainly not for a moral victory'.[63]

By the end of October 1898, the paper was drawing particular attention to the most controversial aspect of the expulsions; Mauve's idea of targeting the employees of pro-Danish Prussian citizens:

> They have expelled Danish citizens, who are employees of pro-Danish employers and the ground appears to be that their employers attended Danish rallies. It is, it seems,

[57] LA Schleswig-Holstein, 301 Nr 2279. For published versions of the German original, see Sievers, *Die Köllerpolitik*, pp. 69–72 or Hauser, *Preußische Staatsräson*, pp. 263–4. See too Blatt, *Die rechtliche Behandlung der dänischen Minderheit*, p. 54.

[58] The detailed but incomplete files of those expelled can be found in LA Schleswig-Holstein 301 Nr 2437.

[59] See for example the *Hamburgischer Correspondent*, 25 October 1898, in LA Schleswig-Holstein 301 Nr 2215, p. 412. For a comprehensive record of the press coverage on the issue, throughout Germany, see GStAPK I.HA Rep 77 Tit 1176, Nr 3 adh1.

[60] *Leipziger Neueste Nachrichten*, 13 November 1898, in GStAPK I.HA Rep 77, Tit 1176, Nr 3adh1.

[61] Sievers, *Die Köllerpolitik*, p. 73.

[62] *Vossische Zeitung*, 15 November 1898 in GStAPK I.HA Rep 77, Tit 1176, Nr 3 adh1.

[63] *Kieler Zeitung*, 27 October 1898, in LA Schleswig-Holstein 301 Nr 2215, p. 416.

> an attempt to exert pressure on the pro-Danish population through economic damage, so that they stop participating in pro-Danish political endeavours. We believe that this will only exacerbate anti-German sentiment in North Schleswig. . . . One must immediately ask; why this severity against people who are devoid of all political influence?[64]

Certainly, the local press were convinced of Mauve's guiding hand in the expulsions. The Danish language paper *Heimdal* laid the blame squarely at his feet,[65] while the *Hamburger Nachrichten* was forced to correct its earlier assumption that Mauve had simply been acting unilaterally without even consulting Köller. In November, whilst applauding the measures, it expressed its surprise upon learning that the measures were being undertaken beyond Mauve's district:

> The mass expulsions of Danish subjects are assuming ever larger proportions, and are not restricted to the city and region of Hadersleben. They are not, as it originally appeared and was repeatedly reported, the sole and solitary product of Landrat Dr Mauve in Hadersleben. . . . In the end, the patience of the state government wore out, and they have simply made use of their domiciliary rights so that those foreigners who, through their employment in the homes of politically active protesters contribute to the strength of the anti-German movement, make themselves a burden are simply expelled.[66]

The provincial locus of the measures was not only evident to the local press, but also evident in the surprise and disapproval with which the Prussian Interior Minister Eberhard von der Recke von der Horst responded to the expulsions. On 10 November, 1898, Recke wrote to Köller, asking for a full explanation of 'the extent and background of the expulsions'.[67] This was followed up on 14 December, when Recke specifically requested the ptecise number and grounds for the expulsions. He was particularly concerned about newspaper reports that the expulsions were of those who were not themselves politically active and the expulsion of the ill:

> In the press, it has often been claimed that the forewarning of impending expulsion from this administrative region has been excessively short, and that the authorities have been excessively harsh in their conduct. I note in regard to this that a heavily pregnant woman in no fit state to travel and a mother with a seriously ill child were forced to leave. I ask that you explain the manner in which the expulsions have been carried out and that you also explain the individual cases mentioned by the press.[68]

Recke's criticism of the measures continued in May of 1899, when he and the Prussian Foreign Minister urged Köller to remember that a 'careful consideration

[64] *Kieler Zeitung*, 31 October 1898 in LA Schleswig-Holstein 301 Nr 2215, p. 416.
[65] 'Die Ausweisungspolitik', *Heimdali,* 29 November 1898, translated into German in LA Schleswig-Holstein 301 Nr 2215, pp. 455–9.
[66] *Hamburger Nachrichten*, 5 November, 1898, in LA Schleswig-Holstein 301 Nr 2215, p. 422.
[67] LA Schleswig-Holstein 301 Nr 2215, p. 426.
[68] Recke to Köller, 14 December 1898 in LA Schleswig-Holstein 301 Nr 2212, p. 523.

of all relevant factors in individual cases and the avoidance of mass expulsions is seen as politically desirable.'[69]

For his part, Köller too occasionally felt compelled to confront his activist district official Mauve with searching questions of his own, as in the case of the expulsion of the optant Bohnfeldt, who had protested his innocence against the charge of being active in Danish nationalist circles. In a memorandum to Mauve written in the margin of Bohnfeldt's original letter of 26 November 1898 to Köller, the governor inquired why he had actually been expelled and if it wouldn't be better to rescind the deportation order.[70] In a strongly worded and lengthy response, Mauve insisted that Bohnfeldt had threatened other locals that they would lose their livelihoods if they voted 'German' and that he had in fact taken part in pro-Danish rallies. The petition on his behalf, he continued, was yet another symptom of an orchestrated Danish movement that stood much to lose from Bohnfeldt's removal. Rescinding the order would simply outrage German public opinion and signal the weakness of the authorities. As such, he concluded, he would stand by his order unless expressly ordered to overturn it.[71] Persuaded by Mauve's response, Köller informed Bohnfeldt that the expulsion order would stand,[72] but Mauve was thereafter frequently called upon to justify the thoroughness with which he carried out his expulsions of Danes in the Hadersleben region.[73]

The expulsion measures were only belatedly debated and retrospectively approved by the Prussian *Landtag*. Some time thereafter the *Reichstag* also gave their assent in the form of defeating a motion by the Danish Party Gustav Johannsen condemning the expulsions. To give a sense of the locus of action in the expulsions, it is worth reiterating the chronology. With the mass expulsions suggested by Mauve (and agreed to by Köller and the other *Landräte* in October 1898) beginning in November 1898, the Prussian *Landtag* and German *Reichstag* debates on the measures in January and February of 1899 were strictly *ex post facto* affairs, dedicated to debating measures that local officials had already implemented. As the *Frankfurter Zeitung* stated in early December 1898, although the entire nation would have to withstand the international opprobrium generated by the measures, Köller had authorized the mass expulsion order without reference to the central Prussian (much less national) authorities.[74] In fact, views in Berlin on the utility of deportations as state policy were decidedly mixed. On the one hand, Mauve had briefed Prussia's Deputy Minister-President, Johannes Miquel, on the measures agreed upon at the Gravenstein Conference. Miquel

[69] Recke to Köller, 4 Mai 1899, in LA Schleswig-Holstein 301 Nr 2221, pp. 73–4.
[70] Köller to Mauve, 26 November 1898 in LA Schleswig-Holstein 301 Nr 2215, p. 442.
[71] Mauve to Köller, 27 November 1898 in LA Schleswig-Holstein 301 Nr 2215, pp. 443–5.
[72] Köller to Bohnfeldt, 28 November 1898 in LA Schleswig-Holstein 301 Nr 2215, p. 446. One of the reasons cited by Köller was that Bohnfeldt had painted his house red and white as a deliberate provocation.
[73] See for example his long self-justificatory letter to Köller, 25 December 1898, in LA Schleswig-Holstein 301 Nr 2217, pp. 638–43.
[74] 'Zu den Ausweisungen', *Frankfurter Zeitung*, 3 December 1898.

had assured him that they would meet with no opposition in Berlin.[75] On the other hand, Chancellor Chlodwig zu Hohenlohe-Schillingsfürst, who was also Prussia's *Ministerpräsident* and who at the time was bemoaning the earlier expulsion measures in the Polish East as a 'mistake that had brought no advantage, but only damage',[76] wrote to Karl Wilmowski when he heard about the deportations in Schleswig, wondering who had actually ordered them.[77]

Unimpressed with Prussia's latest round of expulsions in North Schleswig, the influential liberal Hans Delbrück used the platform of his editorial in the *Preußische Jahrbücher* to assail Prussian authorities for their attack on the rights of Danes,[78] a stance which saw him reprimanded and fined 500 Marks.[79] Delbrück's initial critique of Prussian policy was as short as it was savage—a single half paragraph in a nine-page article that dealt mostly with Germany's increasingly strident foreign policy position:

> The latest expulsions in Schleswig are a disgrace. When, in presenting the German history of the Schleswig-Holstein War, one comes to depict the crimes of the Danes against their betrayed brother nation, the voice falters and the words die on the tongue, because the uncomfortable truth since then is that what the Danes did then, which aroused such enormous anger within the German nation at the time, was child's play in comparison to the tyranny with which we rule the same territory today. And what is worse than the brutality which makes us detested throughout the civilised world, is the blindness that believes that such measures can have long-term success in the struggle between nationalities. It is with the national sensibilitity as with religion: behind true piety the detestable clerics, the heresy sniffers and the inquisitors spring up, who, in the name of what is holy, practise their vileness. So too our national convictions sometimes engender nationalist fanaticism, which wildly and perversely believes that the laws of humanity can be overturned, thereby inflicting irreparable damage to the national project that it means to serve.[80]

Despite being fined and receiving a public lambasting in the nationalist liberal and conservative press, Delbrück remained defiant, shrugging off calls for his tenure as a Berlin professor to be ended, stating simply that, while dismissal from his profession might have been the price for political statements in the first half of the nineteenth century, the freedoms afforded by the German *Rechtsstaat* enabled him to speak quite freely on the subject. He then continued his withering critique of conservatives, who, he remarked, had been devoid of ideas until nationalism presented itself to them. Now fanatical nationalism was their only principle. He

[75] Sievers, *Die Köllerpolitik*, p. 85.

[76] Chlodwig zu Hohenlohe-Schillingsfürst, 7 December 1898 in Karl Alexander von Müller (ed.), *Fürst Chlodwig zu Hohenlohe-Schillingsfürst. Denkwürdigkeiten der Reichskanzlerzeit*, Deutsche Verlags-Anstalt, Stuttgart, 1931, p. 472.

[77] Hohenlohe-Schillingsfürst to Wilmowski, 23 December 1898 in Müller (ed.), *Fürst Chlodwig zu Hohenlohe-Schillingsfürst*, p. 475.

[78] Hans Delbrück, 'Frankreichs Zurückweichen von Faschoda. Amerika und die Philippinen. Rußland und die Vereinigten Staaten in Ostasien. Die deutsche Türkenfreundschaft und die Loslösung von Kreta.—Innere Politik. Ausweisungen', *Preußische Jahrbücher* 94 (3), 1898, p. 574.

[79] Sievers, *Die Köllerpolitik*, pp. 94–9.

[80] Delbrück, 'Frankreichs Zurückweichen von Faschoda', p. 574.

warned of a coming price for unrestrained German chauvinism. 'If we give the national fanatics a free hand,' he argued, 'a reversal will one day follow that will see the true, precious and finer spirits disgusted and averse to nationalist sentiments. The task is to nourish national enthusiasm without letting it degenerate into intransigence and fanaticism.'[81]

He wondered too why international affairs were not being handled at the national level, indeed not even the state level, but rather were a seeming product of intensely parochial initiatives such as that of Mauve and Köller. He also refuted comparisons with the Polish question by arguing that North Schleswig was not like Prussia's East, where the more serious threat of 'three million Poles' was complicated by the facts that the Poles had no state to which they might retreat (or be sent), and that they were confessionally different from their neighbours. In the east, Delbrück claimed, the Poles were both a threat to Prussian sovereignty but also a crucial element in Prussian agribusiness. In comparison, the events in North Schleswig were hardly the type of significant political issue demanding measures as radical as expelling 'milk maids' because their employers were Danish nationalists.[82]

Delbrück found important support in two professors from Schleswig, Julius Kaftan and Friedrich Paulsen, as well as from numerous German Chambers of Commerce, who were concerned for their business connections with Scandanavia.[83] Kaftan's defence of Delbrück reiterated the basic point that what was unjust behaviour by the Danish authorities towards the German minority in the past was similarly unjust when carried out by the Prussian authorities against the Danish minority. Furthermore, he argued, such 'brutal measures' (*Gewaltmaßregel*) were counterproductive. At what cost, Kaftan asked rhetorically, would Germany's empire be strengthened and expanded? 'What does it mean in the end if Germandom is strengthened throught out the world and the German flag flies everywhere? It means nothing if we Germans do not prove ourselves to be worthy of being a victorious and ruling nation through faithfulness, justice and magnamity.'[84]

One notable figure who refused to side with Delbrück despite his private misgivings was Chancellor and Prussian Minister-President Hohenlohe. Facing public pressure to rebuke Delbrück for his condemnation of Prussia's actions in Schleswig, Hohenlohe was privately urged by Otto Völderndorff to use the opportunity to resign as Prussia's Minister-President as a 'martyr for free speech', allowing Miquel to take the position, if Delbrück was disciplined without the Minister-President's

[81] Hans Delbrück, 'Ausweisungs-Politik. Reichstag. Gedanken und Erinnerungen des Fürsten Bismarcks', *Preußische Jahrbücher* 95, 1899, pp. 179–87.

[82] Delbrück, 'Ausweisungs-Politik', pp. 179–87.

[83] Mackeprang, *Nord-Schleswig*, p. 180.

[84] Julius Kaftan, 'Nord-Schleswig' *Preußische Jahrbücher*, 95, 1899, pp. 170–8. Kaftan also reiterated his argument in response to his critics in 'Nordschleswig' *Preußische Jahrbücher*, 95, 1899, pp. 564–73, in which he also ruled out any similarities between North Schleswig and the Polish East, which he said was of a different magnitude and degree of seriousness.

agreement.[85] As much as he was attracted to the idea, Hohenlohe declined the possibility for a principled exit from Prussian affairs, pointing out that Caprivi's split of the offices of Prussian Minister-President and German Chancellor had led to his eventual fall.[86] Despite his misgivings, Hohenlohe reluctantly offered his lukewarm public support for the North Schleswig expulsions in the *Reichstag* and Prussia's *Landtag*.

As *ex post-facto* deliberations, the discussions held in the *Reichstag* and Prussian *Landtag* were clearly not about whether the expulsions should occur, but rather whether the expulsions were justified and had occurred legally. The deliberations in these two bodies can be seen as representing the belated response of the political centre, which had not planned, ordered, or carried out the expulsions demanded by local nationalist newspapers and associations and carried out by provincial officials in Schleswig. Yet, despite their tardiness, these debates are an essential source for viewing how these deliberative bodies were used as houses of policy review, and for understanding how the regional discontent in the northern borderlands was understood and interpreted within the context of larger national debates about the demographic complexion of the German Empire. These debates offer a fine grained insight into how central authorities sought to react to the autonomous political actions of provincial authorities, as well as an understanding of how the question of whether the mass expulsions were a form of extra-judicial measure was handled at the time by the representatives of the German *Rechtsstaat*.

The Prussian *Landtag* had set aside 25 January 1899 to debate the Danish question, however by then many of the arguments had been foreshadowed in the discussion of the budget, as a result of the allocation of funds earmarked for the 'strengthening of Germandom' in Posen and North Schleswig. It was in this context that the liberal Eugen Richter introduced the theme on 21 January 1899, concerned that the funds allocated to North Schleswig were being used as a 'slush fund' (*Reptilienfond*) to support the governor's mass expulsions of Danes.[87] Here too the National Liberal Deputy Minister-President, Johannes von Miquel, outlined a defence of what he saw as a consistent policy of Prussian meekness and cultural development in North Schleswig in the face of ceaseless Danish agitation,[88] a view which he repeated during the actual debate on the Danish question on 25 January,[89] and which was also supported by the Conservative Friedrich Wilhelm zu Limburg-Stirum, who praised local officials for their 'humane' policy towards the Danes and accused the left liberal press of a lack of nationalism.[90]

[85] Völderndorff to Chlodwig zu Hohenlohe-Schillingsfürst, 30 December 1898, in Müller (ed.), *Fürst Chlodwig zu Hohenlohe-Schillingsfürst*, p. 476.

[86] Hohenlohe to Völderndorff, 4 January 1899, in Müller (ed.), *Fürst Chlodwig zu Hohenlohe-Schillingsfürst*, p. 477.

[87] Eugen Richter, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 1899, pp. 33–4.

[88] Johannes Miquel, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 21 January 1899, p. 45.

[89] Johannes Miquel, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, pp. 101–2.

[90] Friedrich Wilhelm zu Limburg-Stirum, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 21 January 1899, p. 50.

Along the same lines the National Liberal Carl Sattler accused Richter of lacking the requisite *Nationalgefühl* and argued that the Prussian authorities were 'bound by honour' to stop the separatist agitation of the Danes.[91]

Also unable to wait until the 25th, was Josef von Strombeck of the Catholic *Zentrumspartei*, who argued at length against the expulsions and hotly disputed the idea that activities such as sending children to Danish language schools and writing newspaper articles was so treasonous as to warrant exceptional laws permitting wholesale expulsions. What particularly concerned him, he argued, was the state's attempt to interfere with the right of Danish parents to raise their children in accordance with their inner convictions. He inquired of the *Landtag* precisely what was the minimum threshold of requisite parental nationalism before the state intervened by removing their children? He reminded the House too, that not too long ago it was Catholics who had been seen as enemies of the state. Were Catholic families, indeed all Prussian families now to be threatened by this new loyalty criterion for parental fitness?[92] Astonishingly for a putative defender of the rule of law, Miquel answered Strombeck by positing a difference between justice on one side and *la raison d'État* on the other, opining that 'if von Strombeck and his friends stopped looking at the issue through the narrow point of view of the criminal law judge, they might be able to satisfy themselves that these expulsions were a national necessity'.[93]

The left liberal Heinrich Rickert reminded the House of Prussia's mass expulsion campaign against the Poles in the 1880s, which he said had proved to be a failed and pointless policy that showed the deficiencies of the current policy against the Danes:

> What did Prince Bismarck want? Mass expulsions! He wanted the Poles out. We spoke out against it and would do the same today. Who was right—we or he?…I think that there is no longer any talk of mass expulsions. By the last count we still have 20 000 Russian and 60 000 Austrian citizens with us here. Do you want to throw all of them out? The government saw that it couldn't go on in this way, and there were of course the resolutions of the Argarian Chambers that lobbied for the return of these Russian workers.…With regard to the expulsion of Poles, we and not Prince Bismarck were right. The government gave up on these mass expulsions, because they were unnatural and impractical as well as cruel.[94]

[91] Carl Sattler, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 21 January 1899, p. 65. Richter replied that he was glad not to share Sattler's national pride which was nothing more than 'ein wilder Chauvinismus'. Richter, *Verhandlungen des preußischen Hauses der Abgeordneten*, 21 January 1899, p. 67.

[92] Josef von Strombeck, *Verhandlungen des preußischen Hauses der Abgeordneten*, 23 January 1899, p. 76. The claim that Danish parents were being threatened with the removal of their children for reasons of state was disputed by the Prussian Justice Minister Karl Schönstedt, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 21 January 1899, p. 83.

[93] Johannes Miquel, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 23rd January 1899, p. 79.

[94] Heinrich Rickert, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 23 January 1899, p. 92. Miquel hastened to brand Rickert's sentiments as damaging xenophilia. Johannes Miquel, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 23rd January 1899, pp. 95–6.

While opponents invoked the historical precedents of the *Kulturkampf* and the expulsion of the Poles in the 1880s, proponents too were forced to address the relationship between Schleswig and other regions within Prussia. Miquel was forced to defend the treatment of not only the Danes but also the Poles, answering the Polish deputy Stanisław Motty's claim that Germany's Hakatist chauvinists were also plotting the 'annihilation of Polendom in the east'.[95] Miquel reminded nationalist Poles that 'to tolerate a province in foreign hands that is a few days march from Berlin is a situation that would be like [the French occupation] after Jena, and Prussia must eternally defend its sovereignty over this province to the last drop of blood'.[96] The Culture Minister Robert Bosse also had to defend himself against the charge of anti-constitutional education regulations—this time against Jewish teachers and pupils in Prussian schools.[97] Accusations levelled by the left liberals, Centre Party, and Polish deputies that Prussia had illegally targeted Danes, Poles, Jews, and Catholics with special laws were countered by National Liberal and Conservative deputies who reached for the colonial tropes of the 'culture bearing' nature of Prussian policy towards its minorities.

The 25th of January saw more detailed discussion of the Danes, courtesy of a question from the left liberal Theodor Barth which made both the regional locus of power and the most controversial aspect of the expulsions very clear:

> According to a recent public admission, the governor of Schleswig-Holstein has in many cases ordered expulsions of Danish citizens not because they have proved themselves burdensome, rather for the purpose of placing pressure on their pro-Danish employers. Is it true that measures of this and a similar nature have been followed on the initiative of Governor Köller, and is the government inclined to support the measures ordered by the governor?[98]

Barth spoke to his question, asking the House to offer a rationale for what had occurred. He suggested that Danish language newspaper articles written by a handful of hotheads were hardly grounds for alarm in a nation the size of Germany, given that most Danes would be won over by an inclusive approach to nationalism that facilitated language retention and looked to Germanization over the long term rather than immediately. With regard to the expulsion of apolitical Danes in order to coerce their employers to stop their irredentism, Barth pointed out that Köller had admitted that those expelled were blameless, and opined that these actions could only be aimed at having a 'terrorising effect' and would predispose those who had hitherto been politically neutral Danes towards a justifiable animosity towards Germany.[99] There were also questions, Barth continued,

[95] Stanisław Motty, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 24 January 1899, p. 110.
[96] Johannes Miquel, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 24 January 1899, p. 115.
[97] Robert Bosse, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 21 January 1899, pp. 53–4.
[98] *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, p. 139.
[99] Theodor Barth, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, pp. 139–43.

regarding local authorities' intrusion into families. The idea that pro-Danish parents might lose their right to raise their children, who would be sent to live with their political enemies, would also radicalize Nord Schleswig's Danish population and negatively affect Germany's economic and diplomatic relations with not merely Denmark but all of Scandinavia.[100] The cruel nature of the expulsion of the blameless would also have a telling impact upon the international reputation of Prussia. The international press had began to wonder 'how is it possible that a great state such as Prussia can reach for such measures, that it can embrace this clutch of repressive means, that in the end chase a few Danish milk maids across the border?' In case anyone had forgotten, Barth concluded, the legacy of Prussia's earlier waves of repression was that 'the Centre Party is the most powerful party in Germany and the Social Democrats is the largest'.[101]

Closing ranks with Prussian authorities in Schleswig, Interior Minister Recke, responded with the argument that 'far from a violent attempt at the Germanization of the *Nordmark* and the destruction of the Danish element there', the expulsions were a 'simple government measure against Danish agitation', a legitimate measure designed for 'the protection of the national interest against antinational endeavours [whereby] cosmopolitan interests must recede in favour of self-preservation and the safeguarding of state authority'.[102] Recke went on to rebuke the sitting Danish deputy Hans Peter Hanssen for his comments in the Danish newspaper *Hejmdal* where he had discussed the possibility of another war between Germany and Denmark over the North Schleswig question. The Danish cultural and economic associations as well as the Danish language press in the region were being targeted by Schleswig's district authorities, Recke argued, because they were an integral part of this pernicious Danish agitation.[103] He admitted that not all those who had been deported were individually guilty, but argued that there were past examples, such as the US mass deportation of those classified as paupers in the 1890s and the Prussian mass expulsion of Poles in the mid-1880s, where governments had used exceptional measures to prevent entire classes of people from becoming burdensome by deporting them. As for the threat to confiscate the children of activist Danes, Recke disingenuously denied that any such measure had been countenanced.[104]

Prussia's Culture Minister Robert Bosse then re-entered the discussion to assert that the 1888 school language reforms had been thoroughly investigated and on no account should they be seen as an underlying cause for the current agitation,

[100] Theodor Barth, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, pp. 143–5.
[101] Theodor Barth, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, p. 145.
[102] Eberhard von der Recke von der Horst, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, pp. 145–6.
[103] Eberhard von der Recke von der Horst, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, pp. 146–7.
[104] Eberhard von der Recke von der Horst, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, p. 148.

nor should they be repealed, given that this would assist Danish agitators in building future generations of irredentist Danes:

> I do not see it as a particular misfortune if Danish is spoken in a few villages in North Schleswig. I believe that Germany, the German Empire, as well as Prussia are strong enough to be able to bear that. But, gentlemen, it is an entirely different question if our state were to allow the language of a foreign nationality to be nurtured in schools in our state, in particular in favour of a nationality from which a hostile anti-German agitation emanates. . . . I am against this in North Schleswig just as in Posen and in all districts where we have two languages mixing.[105]

In a similar fashion, Schleswig National Liberal Carl Bachmann condemned Danish agitators and Hanssen in particular for behaving as if a plebiscite such as that promised by Article V of the Peace of Prague was possible, despite Prussia's and Austria's abandonment of the article in 1878. Once again he discussed the numerous Danish civil society organizations and their corrosive effects and suggested that assisting such associations undoubtedly warranted expulsions.[106] Holstein's Free Conservative deputy Otto von Moltke also discussed in detail the disloyalty of North Schleswig's Danish language press and ridiculed Barth for his 'misunderstanding' of the facts in the region, which he claimed, would cost the left liberals of Schleswig Holstein dearly in coming elections.[107] He accused Barth's party of having a different view of the *Rechtsstaat* to that of the Free Conservatives, and that this misunderstanding of state power explained the left liberals' reluctance to act decisively in the national interest:

> You presume that the state must be above all anxious not to injure in any way the rights of the individual, the rights of the person. . . . We, on the other hand, stand by the simple and logical principle, that it is only actually possible for a state to protect the rights of its citizens and foreigners, when it is in possession of its absolute power, honour strength and integrity, not when it shows weakness somewhere or is unable to find the means to confront circumstances such as those in North Schleswig. It is here that we part company.[108]

Moltke finished his speech with a rather theatrical flourish, warning the government in Copenhagen, that 'we will not let you take Schleswig', followed by a rousing chorus of '*Deutschland, Deutschland über alles*'.[109]

The left liberal Carl Munckel disputed the necessity of the measures, arguing that they were not only unjust, but could not even be excused with the reasoning that they were effective and necessary measures. Countless livelihoods had been

[105] Robert Bosse, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, pp. 149–50.
[106] Carl Bachmann, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, pp. 150–4.
[107] Otto von Moltke, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, pp. 154–8.
[108] Otto von Moltke, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, p. 159.
[109] Otto von Moltke, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, p. 160.

ruined all for the sake of embittering the Danish speaking population for no appreciable gain, much like the *Sozialistengesetz* in earlier times. As a great and powerful nation, Munckel continued, Germany had the responsiblilty to use its power wisely and justly, not to maliciously destroy the lives of political opponents. Far from a judicious use of power, this was 'an act of naked violence against the weak',[110] a charge vigorously refuted by the National Liberal Robert Friedberg who saw the new measures as a remarkably effective way of bring the agitators to heel. He dismissed British criticism of the Prussian measures by reminding the assembled deputies of Britain's own acts of repression in Ireland, which he viewed as similarly justifiable.[111]

Representing North Schleswig's Danish Germans, the Danish deputy from Apenrade, Hans Peter Hanssen, briefly but robustly refuted the claim that the Danish press and Danish civil society organizations were operating outside of the boundaries of the law. On no account, he reasoned, should the attempts to defend the Danish language and celebrate their Danish heritage be seen as separatist agitation. The work of the Danish associations was not dissimilar to the work of the *Alldeutscher Verein* overseas; working towards the goal of ensuring that the German diaspora maintained their language and national consciousness.[112] This elicited an objection from the *Reichspartei*'s Otto Holtz, who suggested that extrajudicial measures were required in North Schleswig and followed Miquel in suggesting that reasons of state were beyond the scrutiny of the law, arguing that 'the criminal legal code is not always sufficient to confront the agitation in North Schleswig with the efficacy required for Prussia's public good'.[113] The final speaker, the National Liberal Christian Jürgensen from Husum, concurred, arguing that just because the Danish methods might technically be legal, their goal, the separation of North Schleswig from Prussia, was not to be tolerated. As such, he argued, Prussia needed to find whatever means it could to 'detroy (*vernichten*) this agitation'.[114]

The Prussian *Landtag* debate, illustrated the divide between left liberals, Danes, and the Catholic Centre Party on the one hand, and the National Liberals and Conservatives on the other. On the precise issue of the expulsions, the Conservatives and National Liberals did not deny that some of the victims had nothing to do with Danish nationalist politics and were simply used as a means to place economic pressure on politically active Danes who could not be deported because they held Prussian (and therefore German) citizenship. Remarkably, instead of searching for a legal basis for such measures, it was repeatedly asserted

[110] Carl Munckel, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, pp. 163–6.
[111] Robert Friedberg, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, pp. 166–8.
[112] Hans Peter Hanssen, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, pp. 170–1.
[113] *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, p. 172.
[114] Christian Jürgensen, *Verhandlungen des preußischen Hauses der Abgeordneten*, 18(1), 25 January 1899, p. 173.

that the rule of law and the rights of the individual were secondary considerations when it came to issues of national security—despite the fact that the expulsions in no way exceeded the powers offered by existing laws.

The legality of the expulsion of Danes from North Schleswig was also the subject of an intense debate in the *Reichstag* in February of 1899, after the Danish Party deputy Gustav Johannsen submitted a question to Chancellor Hohenlohe, who had faced similar frontier friction during his time as ex-governor of Alsace-Lorraine. On behalf of his northern Schleswig constituents, Johannsen asked (with a pointed reference to exceptionality), 'does the Reich Chancellor deem the exceptional measures and the related expulsions of Danish subjects that have been carried out by the Prussian government as just and in the best interests of the Reich?'[115] Given his personal ambivalence towards Mauve and Köller's expulsion measures, the chancellor sought to deflect the *Reichstag*'s scrutiny by answering precisely as Bismarck had a decade earlier in relation to the expulsion of Poles. The expulsions, he declared, were a matter for the Prussian government (which he of course led), not the *Reichstag*. Despite Hohenlohe's desire to keep Prussia's Danish expulsions out of the *Reichstag*, the Social Democrat Paul Singer, who had himself been expelled from Berlin in 1886 courtesy of the *Sozialistengesetz*,[116] moved that the matter be discussed by the *Reichstag*, a motion supported by the necessary fifty deputies and for the next three sittings it was discussed in a wide-ranging and highly revealing debate.

While elaborating on his question, Johannsen pointed to the indiscriminate nature of the expulsions. Pointing to the statements made by Governor Köller on 25 January 1899, he reiterated the point that authorities were enacting Mauve's plan to expel the Danish employees of politically active Danes with German citizenship, in the hope of placing severe economic pressure on Danish nationalists. Johannsen argued that Danish civic associations were merely conducting lawful activities in line with their culture and personal convictions. In fact, Danish language associations had become necessary because the Prussian government had actively sought to destroy the Danish language through regulations on the teaching of Danish in schools. In an act of community self-defence, Danes had simply banded together to ensure the continuance of their culture. Such associations and their Danish members, Johannsen averred, were threatened not only by Governor Köller, but also by the *Deutscher Verein* who were, he argued, orchestrating a highly inflammatory campaign to Germanize North-Schleswig.[117]

The following day, the left liberal member for Kiel and Rendsburg in Schleswig Holstein, Albert Hänel gave the single most important speech of the debate which

[115] *Verhandlungen des Reichstages* Bd 165, 1898/1900, 34. Sitzung, 16 February, 1899, p. 917.
[116] *Amtliches Reichstags-Handbuch*, 10. Legislaturperiode 1898–1903, Berlin, 1898, p. 265.
[117] Johannsen, *Verhandlung des Reichstages* Vol 165, 1898/1900, 34. Sitzung, 16 February 1899, pp. 918–22. For another contemporary and highly critical view of the *Deutscher Verein* from a North Schleswig/Danish perspective a decade later, see Tiedje, *Die Zustände in Nord-Schleswig*, pp. 34–9.

set the tone and parameters of debate for the rest of the speakers. He insisted that something that affected Germany's international reputation such as the expulsion of foreign nationals was properly a subject for the *Reichstag*, not merely the Prussian *Landtag*. Like declarations of war and peace and the sending abroad of ambassadors, expulsions needed to be managed at the federal level to ensure that they did not have any unintended consequences on foreign affairs. Hänel then argued that the matter before the *Reichstag* was more than just that of expulsions, but included the entire set of 'exceptional measures' employed in Schleswig, including the abandonment of the freedom of the press, which in itself was a national rather than merely Prussian matter. More seriously, Hänel argued that the expulsions were aimed not at foreigners, but citizens, raising the question of whether 'this accords with the fundaments of our criminal law legislation that the nation has passed?'[118]

For Hänel, the North Schleswig question was one of regional assimilation, where 'a piece of German territory, I will not say stands in remote danger of detachment, but at the moment has not internally bound itself to the German Reich'. He asked how it might seem to those outside Germany, particularly in the Scandinavian north, who observe that 'after 35 years of rule by the Prussian government the claim is still made today, that the region requires exceptional measures to maintain the connection to the Prussian state'. This, Hänel claimed, demonstrated a failure to complete the task of 'inner colonisation'. As a self-professed advocate of a German North Schleswig, Hänel saw the Danish nationalist movement as malicious and disloyal. By the same token, however, he saw the methods and inflammatory rhetoric of Schleswig's *Deutscher Verein* as no better. 'The cry for "destruction" (*Ausrottung*), the slogan "out with the Danes across the Königsau [Kongeå]" can be heard perpetually throughout the region.' Because of this, Hänel suggested, the Danes could not be expected to believe that a 'peace that did not require giving up their nationality' was possible.[119] He warned against acting like the British in Ireland, perpetually sending in ever increasing numbers of troops to quell a nationalist insurgency without success. A forced quiet in the region might be possible through oppressive measures, but that would not bring about the conditions necessary for assimilating the Danes psychologically. Similarly, the use of exceptional measures to suppress the Danes could never ensure 'that they behave and feel like German and Prussian citizens . . . not merely superficially subject to our constitution'; a task that should be all the easier, given the important economic relations and lack of cultural and confessional differences between the two nationalities when compared to those of 'the Slavic population in the east and the French in the west'.[120]

On the question of the expulsions themselves, Hänel urged caution and humanity in the application of them to foreign citizens, particularly since the

[118] Hänel, *Verhandlungen des Reichstages* Bd 165, 1898/1900, 35. Sitzung, 17 February, 1899, pp. 923–4.
[119] Hänel, *Verhandlungen des Reichstages*, 17 February 1899, pp. 924–6.
[120] Hänel, *Verhandlungen des Reichstages*, 17 February 1899, pp. 926–8.

expelled Danes were not exactly vagabonds or beggars, but industrious and useful workers. He also professed his concern that these measures were illegally aimed at Germans, not foreigners. By this Hänel meant that the workers of Danish agitators who were German citizens, were being expelled because of the political proclivities of their German employers. That is to say expulsions were being used illegally as a coercive measure by the Prussian state against domestic political opponents.[121] That these measures were considered necessary, he continued, was a result of 'the bankrupt Prussian policies of the last ten years' that had actively sought to suppress expressions of Danish national identity, in particular Danish language education. Had these measures not been introduced, the support for Danish nationalism and Johannsen's Danish Party would have continued to diminish towards insignificance. Given the Prussian attempts to suppress their language and the underlying national chauvinism that informed Prussian policy, the Danish agitation, in Hänel's opinion, was justified, while 'exceptional measures and expulsions' were not.[122]

A counterpoint to Hänel's Centre-Left interpretation was the conservative position proffered by the Schleswig native Christoph von Tiedemann of the *Deutsche Reichspartei*, who stressed what he saw as the treasonous nature of the *Nordmark* Danes. Far from accusing Prussia of whipping up Danish protests through draconian measures, Tiedemann blamed decades of Prussian liberality, which had allowed separatist sentiment to flourish, for the militancy of the Schleswig Danes.[123] As a past chief of police in Flensburg, where he and the Danish Party's Johannsen, had earlier 'crossed swords', Tiedemann warned that there were two Johannsens, one who was the seemingly reasonable parliamentarian and the other who was a hotheaded agitator. On the question of the Danish language press, he remarked that, unlike the more honest Poles who openly declared their aims and agenda, the Danes were careful to hide their separatist views in the subtext for legal reasons. Danish publications from the region were nevertheless, he asserted, treasonous.[124] Hereafter, Tiedemann sprayed the Schleswig Danes with a number of charges, alleging that Schleswig Danish was not real Danish but a degenerate *patois*, that Schleswig Danes had always used a separate currency to Denmark, that the Danes in the region had sided with the French in 1870, and that Danish agitation was not heartfelt but a mere front, paid for by the Danish government as a means of undermining Germany.[125] With regard to the expulsions, Tiedemann saw them as entirely justifiable. No Prussian citizens had been affected, only Danish citizens and 'a few optants that have been put up with for a number of years'. In terms of the rationale for the expulsions, Tiedemann argued for the 'extraordinary measures' of the Prussian government on the grounds of the

[121] Hänel, *Verhandlungen des Reichstages*, 17 February 1899, pp. 928–9.
[122] Hänel, *Verhandlungen des Reichstages*, 17 February 1899, p. 930–4.
[123] Christoph von Tiedemann, *Verhandlungen des Reichstages*, 35. Sitzung, 17 February 1899, p. 934.
[124] Tiedemann, *Verhandlungen des Reichstages*, 17 February 1899, pp. 935–6.
[125] Tiedemann, *Verhandlungen des Reichstages*, 17 February 1899, p. 938.

need for national unity, irrespective of whether pursued in Prussian Schleswig or the Polish East:

> In the struggle we are waging in the Northern and Eastern Marches of our Fatherland we do not seek to oppress the nationalities, we do not want to make the Danes into Germans just as we don't want this for the Poles, because we know that we could not. We do not seek to rob them of their language either. However we do believe that as elected representatives of the German people we can and must ask of the Prussian government that inside the boundaries of the Prussian state and the German Empire no endeavours to threaten the integrity of Prussia and Germany be accepted (*Very true! From the Right and the National Liberals*), nor efforts that lead to dissatisfaction and commotion among the populace and that have as their ultimate goal the separation of sections of Prussian and German territory (*Very true! From the Right and the National Liberals*). If the Prussian government exerts itself to suppress and ward off such endeavours and also simply reaches for extraordinary measures, then I believe we are obliged to heartily thank them. As such I feel I must express my conviction, that the extraordinary measures and the expulsions spoken of by the question . . . were justified and in the interests of the German Empire (*resounding applause from the Right and the National Liberals*).[126]

Tiedemann's refutation of Hänel was challenged by the Social Democrat Wilhelm Liebknecht, himself having earlier experienced being expelled under the Socialist Law.[127] He decried Prussia's actions in Schleswig as an international scandal that damaged Germany's reputation abroad. For him, the expulsions were the same 'violent suppression of the national endeavours of the Danes through violent police measures' that had failed to suppress Hanoverian particularism and political Catholicism in the past. Crucially, Liebknecht saw this approach as the product of the Prussian Junker's 'world-view that saw the state, as represented by the police, as all powerful, and that any who engaged in resistance under any circumstances had to be suppressed by all available means'. He saw such a view as simply ineffective for assimilating national minorities. 'The state, that is the police, is everything, the citizen, the individual nothing. With such a premise one cannot assimilate a foreign minority. On the contrary, it is this premise which hinders assimilation and makes the divide larger and larger.'[128]

From this general attack on Prussian Junkerdom and an ostensible police state, Liebknecht moved on to attacking the Prussia's propensity to rely upon expulsion to deal with those with whom it disagreed:

> The incidents in North Schleswig demonstrate in characteristic, indeed classic style, what our reactionary, Junkerish police business really is. There it has shown its worst attributes, its danger to the public good and its extraordinary damage to the nation in the ugliest and nastiest fashion. (*Very true! From the Social Democrats*). Here they rely upon the splendid practice of wholesale expulsions. That is not something just

[126] Tiedemann, *Verhandlungen des Reichstages* 17 February 1899, pp. 938–9.
[127] *Amtliches Reichstags-Handbuch*, 10. Legislaturperiode 1898–1903, p. 225.
[128] Wilhelm Liebknecht, *Verhandlungen des Reichstages* 35. Sitzung, 17 February 1899, pp. 939–40.

> limited to North Schleswig and towards the end of the second third of last year expulsions occurred everywhere. Austrians were expelled, it was attempted to expel Russians, Dutch were expelled, Danes were expelled. In short, Germany presented itself to the world as a country unable to fulfil the first duty of culture and civilisation, the duty of hospitality. It has been used most enthusiastically in North Schleswig and the orgiastic excesses of the police and the Köllerites continue there today.[129]

Thereafter, Liebknecht turned to the practice of expelling the employees of influential Danish optants who could not be expelled, a practice he called a 'hostage system' made possible by the 'repudiation of any legal sensibility'.[130]

Interestingly, Liebknecht reached for the language of ethnic descent, albeit, satirically, when he couterposed the expulsion of the 'Germanic' Danes against the conservatives' clamour for the 'non-Germanic' Poles to be brought in to alleviate labour shortage on their estates. This he put down to the 'Slavic' nature of the eastern conservatives, where 'Slavic' was a byword for reactionary:

> Here in North Schleswig they expel Germanic people to save Germandom, while they bring non-German and a non-Germanic population, Slavs, into the country out of the east, to the advantage of the Junkers—not Germandom, just the Junkers. (*Commotion on the right, Very true! by the Social Democrats*). I haven't considered the Prussian Junker to be the same as the German people for a long time. Germany's Junkerdom is essentially Slavic, it came from Slavic soil and has become Slavic.[131]

It was, he argued, the Junkers' instinctively 'Slavic' spirit of oppression and not the 'free Germanic spirit' that dictated their policy towards the Danes. In this way, he reasoned, 'it is not the Dane who is our enemy, even in North Schleswig—the enemy of Germany is the Prussian Junker'.[132] Liebknecht also objected to Köller's visceral description of the repressive measures, which drew heavily upon medical metaphors. When defending his actions, Köller had explained that it was a 'quick excision of the ulcer with an assured hand'. Liebknecht took exception to Köller's language, which he said positioned a subsection of the German population as an irredeemably diseased segment, calling instead for recognition of their rights as individuals and as a national community.[133]

Thereafter, leading Conservative Albert von Levetzow strenuously asserted that all Prussians and Germans should embrace their assimilation into the state:

> Gentlemen, we expect from every Prussian, from every member of the German Empire, that he feels Prussian and feels German, that he conducts himself accordingly and that he never forgets his duty of loyalty and attachment to the Fatherland. In this he may not be diverted or hindered by foreigners and if there should be

[129] Wilhelm Liebknecht, *Verhandlungen des Reichstages*, 17 February 1899, p. 941.
[130] Wilhelm Liebknecht, *Verhandlungen des Reichstages*, 17 February 1899, p. 941.
[131] Wilhelm Liebknecht, *Verhandlungen des Reichstages*, 17 February 1899, p. 941.
[132] Wilhelm Liebknecht, *Verhandlungen des Reichstages*, 17 February 1899, p. 941–2. 'Nicht der Däne ist für uns der Feind, auch in Nordschleswig nicht;—der Feind Deutschlands, das ist der preußische Junker.'
[133] Wilhelm Liebknecht, *Verhandlungen des Reichstages*, 17 February 1899, p. 942.

> foreigners that attempt to hinder him, even if this is just through their presence, it is just, in fact a duty, to free the country from these foreigners.[134]

Crucial here was Levetzow's view that any foreign nationals who diminished this social cohesion should be deported, even if the disruption was a result not of political action or agitation, but the foreigner's mere presence. In this way, Levetzow justified the expulsion of Danes who had played no active part in separatist agitation in North Schleswig by pointing to the disruptive effects of additional Danish speakers and citizens living and working in a contested border region.

In supporting the expulsions, Gert Tönnies, a National Liberal deputy from Schleswig Holstein, took a slightly different approach. Tönnies suggested that those German farm workers who had hitherto been forced to compete against imported Danish labour now stood to gain as a result.[135] Ernst Lieber from the Catholic Centre Party, however, made known his party's disapproval of both the Prussian expulsions and the wellspring of what he considered to be the 'exceptional measures'; the strictures regulating the Danish language. Lieber outlined the case for an inclusive form of German rule over national minorities that allowed them their cultural expressions of group identity and linguistic difference. German rule in North Schleswig was a given, he argued, however, 'the foreigners over whom rule is exercised . . . must be left their mother tongue'. He ended his discussion by adding that he expected of Prussia that its conduct be in accordance with both justice and the law.[136]

The left liberal Julius Lenzmann, goaded the National Liberals by arguing that for a nationalist party they were strangely supportive of the particularist rights of Prussia to make foreign policy decisions that affected the entire nation. The party's previous long-time leader, Rudolf von Bennigsen, he suggested, would not have allowed Prussia to so easily declare itself above the national interest.[137] Yet, not immune to nationalism, Lenzmann derided the ability of the Danes to achieve any separatist aims as well as those who took them seriously:

> If there really are agitators in North Schleswig or even over the border agitators from Denmark who hold the vain hope and belief that they can win back an inch of German territory for Denmark, gentlemen, this belief is so absurd that it is not worth defending against it, much less employing violent and unjust methods.[138]

Maintaining linguistic freedom while living under foreign rule is not a crime, he continued. Otherwise, all Poles in eastern Prussia, the French in Lorraine and even the 'heroic' *Auslandsdeutsche* in Russia must similarly be criminals. Honing in on the legal aspects of the measures, he agreed with Hänel that the practice

[134] Albert von Levetzow, *Verhandlungen des Reichstages* 35th Sitzung, 17 February 1899, p. 943.
[135] *Verhandlungen des Reichstages* 35th Sitzung, 17 February 1899, p. 945.
[136] Ernst Lieber, *Verhandlungen des Reichstages* 35th Sitzung, 17 February 1899, pp. 945–9.
[137] Julius Lenzmann, *Verhandlungen des Reichstages* 36th Sitzung, 18 February 1899, pp. 952–4.
[138] Lenzmann, *Verhandlungen des Reichstages*, 18 February 1899, pp. 954. See also p. 956, his approving citation of the Prussian Minister Robert von Bosse, who had stated regarding Danish speaking communities in North Schleswig that 'Deutschland, das Deutsche Reich sowohl wie Preußen sind stark genug, um dies sehr wohl ertragen zu können.'

of deporting the workers of troublesome Prussian citizens was 'so excessive and tyrannical' that it represented 'an illegal injustice against Prussian subjects'.[139] So too, he argued, Köller's 'attack upon the rights of assembly and association' represented 'a direct injustice, a directly illegal action, for which the *Reichstag* must keenly interest itself'. For him, the presence of police at Danish weddings in private houses was unconscionable. The linguistic regulations for North Schleswig's schools too, he noted, were causing a serious cultural backlash, to the extent that seventy-seven loyal Prussian pastors from the region had asked that the 1888 decision on Danish language provisions in schools be reversed, because children were finding it difficult to understand the liturgy in Danish.[140]

Beyond all of this, however, Lenzmann was deeply critical of what he saw as Prussia restricting the rights of parents to raise their children as they sought fit (*Erziehungsrecht*). By denying parents the right to offer their children an education in their own language, Lenzmann argued, the state was meddling in a relationship over which they had no moral or legal jurisdiction. Raising the spectre of the children of Social Democrats or other ostensible *Staatsfeinde* being removed by the state for 'poisoning their children with their opinions', Lenzmann disputed that the state had any role to play in regulating the domestic sphere and asserted instead that the natural rights of the family or parents to raise their children in accordance with their own beliefs transcended the desire of the state to inculcate a sense of civic duty and loyalty to the state through education:

> The cruelty and severity transcends everything that can be required from people in an ethical, moral respect, when it is decided that because of their beliefs, the holiest right of the parents, the right to raise their children, is to be taken away from them. (*Very true!*) The parents' right to raise their children is not one bestowed by the state, rather a God given right originating in human nature, in the concept of the family, and in the relationship of children to their parents. It is not a contingent product of the state, rather an integral, holy natural law.[141]

National Liberal and member of the *Alldeutscher Verband* Adolf Lehr thereafter reiterated the view that the Danish agitation was disloyal and systematically sought to destroy the patriotism of young children in the region. Once again the expulsions and other measures were presented as not attacking the Danish language, but rather treasonous behaviour.[142] Openly, he saw this as a form of chauvinism and he did not back away from the connotations that the term implied:

> To my eyes, a chauvinist is one who always and everywhere for German rights and for the German claim to a share of the ruling of the world and advocates for a German place in the sun. Chauvinism is when one is free from that old ingrained German failing, free from all cosmopolitan opacity, free from ill-advised gallantry in arguments between Germans and foreigners. A chauvinist does not always take

[139] Lenzmann, *Verhandlungen des Reichstages*, 18 February 1899, p. 954.
[140] Lenzmann, *Verhandlungen des Reichstages*, 18 February 1899, pp. 954–7.
[141] Lenzmann, *Verhandlungen des Reichstages*, 18 February 1899, p. 957.
[142] Adolf Lehr, *Verhandlungen des Reichstages* 36 Sitzung, 18 February 1899, p. 961. 'Sie mögen dänisch reden, so viel sie wollen; sie sollen nur nicht dänisch agitiren.'

> the side of the foreigner, does not always agree with the foreigner and turn away from one's own brother (*Very true! National Liberals*). To this chauvinism I openly confess and I would be pleased when there was more of this type of chauvinism in the German Empire (*Very good! from the National Liberals and Right*).[143]

In many of these arguments, the experience of other regions within the German Empire hovered in the background, with a number of speakers referring to previous and current events in areas such as Polish Prussia, Hanover, and French speaking Alsace-Lorraine. Revealingly, the representatives of other national minorities in the empire also spoke to the question, and in so doing overwhelmingly identified with the plight of the Danes. When Józef Głębocki of the Polish Party spoke on the expulsions, he condemned what he called the 'exceptional and strict measures of the Prussian government' that aimed at 'the destruction of the Danish nationality in the northern districts of North Schleswig'. With more than half an eye to the experience of his own Polish constituency, he argued that 'when our Danish fellow citizens want to retain their nationality and language and do not want to allow that which is aimed at denationalising them, that is not treacherous agitation, but a completely legitimate, legal defence of their holiest good'. The measures that were being utilized in North Schleswig were quite simply 'unjustified' and 'against the most basic principles of justice and humanity'.[144] The deliberate equation of the Polish case with that of the Danes was complete by his conclusion, when Głębocki stated that 'as a member of a nation, a portion of which had suffered greatly as Prussian citizens under pressure from the Prussian government and the Prussian legal system' he could advise the Danes that they, like the Poles, should trust in God and look to the long term.[145] In a similar vein Herman von Hodenberg, the deputy of the Hanoverian Party (*Deutsch-Hannoversche Partei*) whose primary task in the *Reichstag* was to present the case for the separation of Hanover from Prussia, characterized the repressive measures as specifically and uniquely Prussian and as 'having nothing in common with the German sense and view of justice and equity'.[146] Once again, linking the case of the Danes with that of Hanover, he reminded the *Reichstag* of Levetzow's assimilationist demand that all Prussian subjects feel and behave Prussian, something he claimed the people of Hanover, like the Danes of the *Nordmark* had never done and never would.[147]

Taking up the themes he had broached in the Prussian *Landtag*, the National Liberal Carl Sattler took exception to the Polish and Hanoverian slights against Prussia and bristled at the lack of national pride (*Nationalgefühl*) of the left liberals.[148] On the question of Danish schools and language classes, he suggested that schools were the place for the creation of a strong national consciousness, and should

[143] Adolf Lehr, *Verhandlungen des Reichstages*, 18 February 1899, p. 962.
[144] Józef Głębocki, *Verhandlungen des Reichstages* 36 Sitzung, 18 February 1899, pp. 965–6.
[145] Józef Głębocki, *Verhandlungen des Reichstages*, 18 February 1899, p. 966.
[146] Hermann von Hodenberg, *Verhandlungen des Reichstages* 36 Sitzung, 18 February 1899, p. 966.
[147] Hermann von Hodenberg, *Verhandlungen des Reichstages*, 18 February 1899, p. 966.
[148] Carl Sattler, *Verhandlungen des Reichstages* 36 Sitzung, 18 February 1899, p. 968.

be 'filled with the national spirit'.[149] With regard to the actual expulsions, Sattler argued that the borderlands were by their nature zones of legal exception. 'No-one thinks to harass the Danes,' he argued, 'anywhere beyond the borderlands, where they have undertaken a treasonous stance against the state—nowhere else are the Danes stymied.' The experience in the east with the Poles, he concluded, had taught Prussia that leniency with national minorities does not pay.[150] The left liberal Carl Munckel, however, disagreed with Sattler's notion that the state had a role to play in deciding the linguistic orientation of schools or individuals. Should *Plattdeutsch* and other German dialects also be stamped out in favour of a more 'elegant German'? Similarly, the desire to 'Germanise by encroaching upon the family' was a retrograde step which might have drastic knock-on effects for all German families who were deemed by the state to be insufficiently nationalist. He worried about the precedent set 'if, in a Danish family Danish was spoken and the child was raised as a Dane, and Danish history was highlighted, a family law court judge could say that he was alienating the child from his nationality, because his nationality is German. Then the judge could revoke his rights as the child's guardian.'[151]

Strangely, in supporting Köller's measures, the Conservative deputy from Schleswig-Holstein, Herbert von Bismarck, attempted to divert blame away from Governor Köller (whom he described as a 'humane and gentle man') and onto Hohenlohe, who, as not only *Reichskanzler*, but also *Ministerpräsident* of Prussia had (according to Bismarck) largely engineered the measures. Somewhat candidly, he defended the exceptionality of the measures as Miquel had earlier, by accusing the left liberals of following the naive Kantian dictum *fiat justitia, pereat res publica* (let there be justice though the state should perish) and of failing to understand that 'the actions of the state are not always an issue of pursuing justice', but rather of acting for reasons of state that transcend mere formal legality.[152] This sentiment was immediately supported by fellow conservative Clemens von Klinkowstroem, who demanded that the 'idealism of the current debate would ebb so that pragmatism would come to the fore'.[153]

The debate ended with a vote on the propriety of the use of exceptional measures including expulsions by Prussians in North Schleswig, a vote in which the supporters of Chancellor Hohenlohe used their numbers to defeat the various parties, including the Centre, Social Democratic, and left liberal parties (as well as Polish and Hanoverian parties) who had supported Johannsen's push to have

[149] Carl Sattler, *Verhandlungen des Reichstages*, 18 February 1899, p. 969. Hauser referred to this as the 'the movement away from the humanistic to the nationalist ideal of education' in North Schleswig. Hauser, *Preußische Staatsräson*, p. 94.

[150] Carl Sattler, *Verhandlungen des Reichstages*, 18 February 1899, p. 970.

[151] Carl Munckel, *Verhandlungen des Reichstages* 36 Sitzung, 18 February 1899, p. 973.

[152] Herbert von Bismarck, *Verhandlungen des Reichstages* 36 Sitzung, 18 February 1899, p. 975. These sentiments were echoed by Treitschke in Volume V of his *Deutsche Geschichte*, where he argued that the struggle for Schleswig was a national struggle for power, not a legal dispute. See Holger Hjelholt, *Treitschke und Schleswig-Holstein. Der Liberalismus und die Politik Bismarcks in der Schleswig-holsteinischen Frage*. Oldenbourg Verlag, Munich, 1929, p. 255.

[153] Clemens von Klinkowstroem, *Verhandlungen des Reichstages* 36 Sitzung, 18 February 1899, p. 978.

the expulsions censured by the *Reichstag*.[154] Unlike in the case of the Polish expulsions, the *Reichstag* explicitly endorsed the suite of measures devised by Mauve and Köller, including expulsions aimed at apolitical employees of Germans who were Danish nationalists.

Although the assemblies of Prussia and the German Empire had managed to debate the issue over several days without any motion being passed that appeared to undermine the authority of Governor Köller, the expulsions were scaled back throughout the course of 1899, albeit gradually so as not to upset popular opinion which lay largely on the side of Köller.[155] The verdict of the press on the expulsions was predictably mixed, with the *Deutscher Verein*'s organ *Die Nordmark* unsurprisingly arguing that the expulsions had been successful, as the number of pro-Danish rallies had dropped, those that continued struggled for numbers and the scope for action of the pro-Danish associations had greatly diminished.[156] The *Hamburger Correspondent* concurred to the extent that it simply republished the *Deutscher Verein*'s assessment in full.[157] Equally predictably, the social democratic *Hamburger Echo*, argued that the laws had been an ineffective embarrassment on the scale of the Socialist Laws.[158] 'The way of exceptional laws must be left behind, it later argued, as North Schleswig's Danes could only be won over on the grounds of equal rights'.[159] *Vorwärts* concurred wholeheartedly, arguing that memberships of Danish associations during the period of repression had in fact risen rather than fallen.[160] The *Kieler Zeitung* argued that the reduction in numbers of politically active Danes was a sign of temporary fear rather than the overcoming of personal pro-Danish convictions.[161]

The end of the mass expulsions did not mean the end of all repressive measures against the Danes. Further regulations on the movement of school children persisted, although these were brought to an end by a 5 August 1901 court decision, by which time Köller had less than a fortnight left as governor of Schleswig-Holstein.[162] Even after Köller's exit, overt sympathy with Danish nationalism was brought before the courts. When, for example, Rademacher Jevsen, a known pro-Danish agitator in Prussian Schleswig, decided to brighten up his barn door by painting it red and white in 1903, this was adjudged an act of treason. Jevsen's brushwork was timed to coincide with the birthday of the Danish king, and was perceived by his German neighbours as a calculated political act. The local authorities insisted that Jevsen repaint his barn door and when he did not comply, the door was forcibly repainted in Prussian black. When Jevsen appealed

[154] *Verhandlungen des Reichstages* 36 Sitzung, 18 February 1899, p. 981.
[155] Sievers, *Die Köllerpolitik*, pp. 130–1.
[156] *Die Nordmark*, 15 May 1899 in LA Schleswig-Holstein 301 Nr 2221, p. 78.
[157] *Hamburger Correspondent*, 19 May 1899 in LA Schleswig-Holstein 301 Nr 2231.
[158] *Hamburger Echo*, 21 May 1899, in LA Schleswig-Holstein 301 Nr 2231 'Nur politische Kindsköpfe können darin einen "Erfolg" erblicken'.
[159] *Hamburger Echo*, 22 September 1899, in LA Schleswig-Holstein 301 Nr 2231.
[160] *Vorwärts*, 11 June 1899, in LA Schleswig-Holstein 301 Nr 2231.
[161] *Kieler Zeitung*, 23 May 1899, in LA Schleswig-Holstein 301 Nr 2231.
[162] Mackeprang, *Nord-Schleswig*, p. 183.

this decision, the Prussian *Oberverwaltungsgericht* decided that the injury to the patriotic feelings of his German neighbours was a violation of public order and his appeal was dismissed.[163] On the other hand, the *Optantenvertrag* of January 1907 ensured that the children of optants would not be rendered stateless due to the differences in Danish and German citizenship laws.[164] The Danish issue nonetheless rumbled on until World War One, albeit never with the same intensity as during the '*Köllerzeit*'.[165]

Quite properly, Erich Hoffmann has viewed events in North Schleswig as German versions of a 'pan-European symptom' of nationalist pressure that saw Russia try to Russify the Poles and the population of the Baltic territories, the Hungarians attempting the Magyarization of German, Romanian, and Slovakian minorities, the English continuing their assault on Irish nationalism, and the French facing similar difficulties with the Basques, Corsicans, and Bretons.[166] At the heart of many of these endeavours too was the suppression of minority languages and expressions of national difference. Like the measures suggested and introduced in these other locations, the expulsion of Danes was envisaged as a means of hastening the process of assimilation within the nation-state, by making the rival choice of Danish nationalism appear too risky and too costly. Paradoxically, the expulsion measures were driven by the radical and insistent inclusivity of assimilatory nationalism which offered a stark choice; acculturation and Germanizsation, or expulsion.

Yet beyond the the nation building dynamics that supplied a set of grounds for the expulsions, the mechanism chosen for them must also be kept in mind. Despite the regular insistence that these measures were enbled by exceptional laws (*Ausnahmegesetze*) brought about to deal with a state of exception (*Ausnahmezustand*), the expulsion of Danish citizens from North Schleswig was entirely legal. With expulsions a state rather than imperial matter, Prussian authorities operated within the letter of the law. More astonishing, however, was the intensely local nature of the expulsions; demanded by local civil society organizations and newspapers, planned and carried by district authorities, and authorized by the provincial governor who did not even bother to mention it to the Minister President of Prussia, despite the obvious implications for the political climate of Prussia and the empire, as well as foreign relations with Denmark. Commentators in the press could only hope that 'the heads of [Prussia's] eastern and western provincial authorities are less bold daredevils (*Draufgänger*) than Köller and will not make unnecessary enemies

[163] Freytag, Techow, Schultzenstein, and Reichenau (eds), *Entscheidungen des königlichen Preußischen Oberverwaltungsgerichts*, 41, Carl Heymanns Verlag, Berlin, 1903, pp. 432–7. See also Blatt, *Die rechtliche Behandlungen*, pp. 48–9.

[164] Otto Brandt, *Geschichte Schleswig-Holsteins* (7th edn), Walter G Mühlau Verlag, Kiel, 1976, p. 307.

[165] For an overview of the post-Köller era, see Fink, *Geschichte des schlewigschen Grenzlandes*, pp. 175–86.

[166] Hoffmann, *Das Nationalitätenproblem in Schleswig*, p. 245.

of the French and Russians through independently conducted local politics (*Lokalpolitik*).[167] Far from an example of Prussian centralism or Wilhelmine authoritarianism, the expulsion of the Danes was an illustration of the political agency and power invested in local authorities, who, through their response to frontier pressures, sought to demonstrate their attentiveness to the views of local agitators such as the *Deutscher Verein*.

[167] 'Zu den Ausweisungen', *Frankfurter Zeitung*, 3 December 1898. See too the comment in *Die Post*, 20 November 1898, that Köller 'alone carries the full responsibility for the expulsions'.

7

The 'Gypsy Plague' in Bavaria and Beyond

In July 1907, Costa Staganos and his family found themselves the object of an expulsion order issued by the Bavarian State. A bear trainer reputedly from Bulgaria, Staganos was to be taken via train to Orsova, where he and his family would be taken by ship along the Danube to their homeland. A number of difficulties, however, stood in the way of this deportation. The journey was an expensive one and it was unclear who should pay the costs. In addition, the Staganos family did not have any identity papers, complicating travel to a region which, while autonomous, was at least officially still part of the Ottoman Empire. In addition, it was unclear whether Bulgarian officials would even accept the Staganos family once they had been delivered. Over a number of months, these issues were gradually worked through and the means to deport this 'Gypsy family' became clearer. To retrieve the costs to the state of Bavaria, the assets of the family, consisting of their wagon (their home) and their animals (their livelihood), would be sold. If the Bulgarian authorities proved unresponsive to Bavarian overtures for their return, then pushing them over the German border into France emerged as a possible option. With regard to the issue of identity papers, the Ottoman consul general in Munich eventually agreed to give the family new ones, despite the tenuousness of the Sublime Porte's post-1878 claim to sovereignty over Bulgaria. With this patchwork of measures in place, the family was successfully expelled from German soil in early October 1907.[1]

The Staganos family was one of a large number of 'Gypsy families' expelled from the German Empire, despite the fact that it remained unclear to *Kaiserreich* authorities and scholars alike precisely who 'Gypsies' were and why they required removal. The closest thing to an authoritative legal definition of the term '*Zigeuner*' did not emerge in Germany until 1911. It was adopted from a conference in Munich where a national approach to the treatment of Gypsies was debated. At this conference, the 'Munich Conference on the Combating of the Gypsy Menace', the criminologist Dr Theodor Harster maintained that, as a working definition, 'irrespective of racial or ethnic origin, all those who habitually wander (usually in hordes or groups) without professional reason or who wander for business, artistic or deceptive purposes without having a fixed address are to be deemed Gypsies'.[2] Harster's

[1] Bayerisches Hauptstaatsarchiv (BHStA), MF67417 Zigeuner. Heimat, Staatsangehörigkeit, Sicherheitspolizei 1883–1936. Correspondence dated 7 July, 27 July, 14 September, 18 September, 10 October 1907.

[2] 'Denkschrift über die Bekämpfung des Zigeunerunwesens' (1912) Generallandesarchiv, Karlsruhe, 234/5682, cited in Rainer Hehemann, *Die 'Bekämpfung des Zigeunersunwesens' im Wilhelminischen Deutschland und in der Weimarer Republik, 1871–1933*, Haag & Herchen Verlag,

argument that Gypsies were not a discrete ethnic group was generally accepted. Indeed the few reservations expressed about his definition from participating states worried that even with this broad description unnecessarily restricted the use of the term.

The seemingly enormous flexibility of this early twentieth-century semi-official label of '*Zigeuner*' was a product of its usage for the century prior to this, when the term was even more elastic, often used as a catch-all pejorative for the full range of non-sedentary groups and communities. Legislation from the first two decades of the nineteenth century saw 'Gypsies' associated with, amongst others, wandering musicians, puppeteers, travelling actors, and beggars.[3] By the end of the nineteenth century the description of Gypsies also overlapped with that of Germany's large cohort of itinerant pedlars, all of whom were cast as peripatetic thieves and beggars.[4] This sub-population confounded the emerging racial theories of early twentieth-century anthropologists, with many who were labelled as ethnic Sinti observed to be 'civilised', having 'given up the habits of their people and becoming useful members of society', in no way indulging in 'typically Gypsy and therefore dangerous behaviour'.[5] Prior to World War One, that is, 'racial' or ethnic identity was neither a necessary nor a sufficient condition for the application of the appellation of 'Gypsy'. Likewise, racial typologies were not seen as useful indicators for predicting patterns of 'Gypsy' behaviour.[6] Rather, alternative social definitions of *Zigeunertum* that avoided racial essentialism were employed.[7] As Alfred Dillmann, Germany's foremost early twentieth-century expert on Gypsies, stated, 'the Gypsies as a discrete people have long since ceased to exist'.[8] In 1911, Hermann

Frankfurt, 1987, p. 237. For discussion of this term at the conference, see BHStA Min.In. 72575 Niederschrift, also discussed by Angelika Albrecht, *Zigeuner in Altbayern 1871–1914. Eine Sozial-, Wirtschafts- und Verwaltungsgeschichtliche Untersuchung der bayerischen Zigeunerpolitik*, Kommission für Bayerische Landesgeschichte, München, 2002, p. 177.

[3] See the Bavarian ordnances of 7 February, 20 March 1800, 16 December 1801, 28 November 1816 in BHStA MA59998.

[4] Richard Rössger, 'Eine Untersuchung über den Gewerbebetrieb im Umherziehen', *Jahrbücher für Nationalökonomie und Statistik* Series III, Vol 14, 1897, pp. 204ff. On this point, the Handelskammern of Münster, Niederbayern, Wiesbaden, Lehr, and Hildesheim were all united between 1889 and 1893. See particularly the comments of the Handelskammer Lehr that claimed of them, 'wo nichts zu verkaufen ist, betteln und stehlen sie unter irgend einem Vorwande' (Rössger, 'Eine Untersuchung über den Gewerbebetrieb im Umherziehen', pp. 206–7).

[5] Werner K. Höhne, *Die Vereinbarkeit der deutschen Zigeunergesetze und -verordnungen mit dem Reichsrecht, inbesondere der Reichsverfassung*. Dissertation, Ruprecht-Karls-Universität, Heidelberg, 1929, p. 11.

[6] Leo Lucassen, *Zigeuner. Geschichte eines politischen Ordnungsbegriffes in Deutschland 1700–1945*, Böhlau Verlag, Cologne, 1996; Wim Willems, *In Search of the True Gypsy: From Enlightenment to Final Solution*, Frank Cass, London, 1997, pp. 293ff. Julia Hanschkow has also argued that '*eine Zuordnung der Betroffenen zu einer abgrenzbaren Ethnizität… kann aus der Fremdperspektive der Behörden zwischen 1906 und 1933 nicht geleistet werden*' Juliane Hanschkow, 'Etikettierung, Kriminalisierung und Verfolgung von "Zigeunern" in der südlichen Rheinprovinz zur Zeit des Kaiserreichs und der Weimarer Republik 1906–1933', in H. Uerlings and J. K. Patrut (eds), *'Zigeuner' und Nation. Repräsentation—Inklusion—Exklusion*. Peter Lang, Frankfurt, 2008, p. 252.

[7] Albrecht, *Zigeuner in Altbayern 1871–1914*, p. 373.

[8] Alfred Dillmann, *Zigeuner-Buch herausgegeben zum amtlichen Gebrauche im Auftrage des K.B. Staatsministeriums des Innern vom Sicherheitsbureau der K. Polizeidirektion München*, Dr Wild'sche Buchdruckerei, Munich, 1905, p. 5. This is of course not to say that ethnic communities such as the Roma and Sinti did not 'exist', but rather that they are only a segment of those who were

Aichele, concurred, outlining his own approach to defining Gypsies by insisting that 'where racial science substantially fails, the social sciences deliver better results'.[9]

With regard to the social position of Gypsies within German society, Aichele was equally forthcoming. 'Gypsydom,' he argued, 'represents an unhealthy social formation within the organism of cultured peoples.'[10] By way of comparison to the rest of Germany, he found that 'the Gypsy is still at the level of the child'.[11] Further, he argued, 'the Gypsy is in substance without culture. In accordance with their entire way of life, the Gypsy belongs to the lowest economic class and finds himself at the crossroads between the highest level of barbarism and civilisation.'[12] Their nomadic way of life, according to Aichele, was a product of the inherent 'lack of intellectual capacity of the uncivilised' who had inexplicably remained a *Naturmensch* in the age of 'Krupp's artillery, the giant telescope, the steamer, the railway, car, bicycle, the enormous bridge and tunnel, electric power, the development of air travel, and the achievements of the microscope'.[13] Drawing upon the Hegelian language that dominated the social theory of the period, Aichele asserted that 'the Gypsies have no history',[14] a status that automatically placed them on the same cultural level as the other 'non-historical' *Naturmenschen* of the extra-European colonial world.

Despite the lack of a hard racial core to *Kaiserreich* definitions of Gypsies, a strong sense of their exotic alterity nonetheless overlayed anthropological, historical, and particularly cultural explorations of the *Zigeuner*.[15] Yet, beyond its literary function,[16] as a mytho-historical designation for a migratory group assumed

policed under the police provisions aimed at *Zigeuner*. See Werner K. Höhne, *Die Vereinbarkeit der deutschen Zigeunergesetze*, p. 9.

[9] Hermann Aichele, *Die Zigeunerfrage mit besonderer Berücksichtigung Wurttembergs*, Stuttgart, 1911, pp. 8–9. For this reason, the term 'Gypsy' rather than 'Roma' and/or 'Sinti' is used here, reflecting as it does the *Kaiserreich* understanding of the group of people targeted. It is worth pointing out that even at this high point of race theory, defining who was a Gypsy remained a problem for racial theorists and the Nazi state's coercive apparatus alike. As late as 1938, Robert Ritter complained of the 'haziness' (*Verschwommenheit*) of the term. 'The word *Zigeuner*,' he said, 'in everyday language as well in police parlance is actually used completely independently of the racial origin of the itinerant…the term was derived, even in scientific discussions, from the way of life and not the racial core.' Robert Ritter, 'Zigeuner und Landfahrer' in anon, *Der nichtseßhafte Mensch*, CK Beck'sche Verlagsbuchhandlung, Munich, 1938, p. 71.

[10] Aichele, *Die Zigeunerfrage*, p. 7.

[11] Aichele, *Die Zigeunerfrage*, p. 90.

[12] Aichele. *Die Zigeunerfrage*, p. 7.

[13] Aichele, *Die Zigeunerfrage*, p. 25 'Diese mangelnde Geisteskraft des Naturmenschen ist es auch, die den Zigeuner innerhalb des gewaltigen Organismus der modernen Kulturvölker unstet und flüchtig macht.' See also pp. 7–8 '*Man [kann] ermessen, wie sehr.*'

[14] Aichele,. *Die Zigeunerfrage*, pp. 16, 36.

[15] Marion Bonillo, *'Zigeunerpolitik' im Deutschen Kaiserreich 1871–1918*, Peter Lang, Frankfurt, 2001, pp. 36–61. Wolfgang Wippermann, '"Das ius sanguinis" und die Minderheiten in Deutschen Kaiserreich', in Hans Henning Hahn and Peter Kunze (eds), *Nationale Minderheiten und Staatliche Minderheitspolitik im Deutschland im 19. Jahrhundert*, Akademie Verlag, Berlin, 1999, pp. 133–43; Claudia Breger, *Ortlosigkeit des Fremden. 'Zigeunerinnen' und 'Zigeuner' in der deutschsprachigen Literatur um 1800*. Böhlau Verlag, Cologne, 1998, pp. 2–3.

[16] The following will not discuss in detail the numerous literary depictions of Gypsies, notwithstanding the fact that they were critical in constructing the intellectual terrain upon which policy and public commentary was based. For the pan-European literary construction of a Gypsy imaginary, see Kirsten von Hagen, *Inszenierte Alterität. Zigeunerfiguren in Literatur, Oper und*

to have originated from somewhere in the hazy direction of Asia or Egypt in the early fifteenth century,[17] the term was one used by government authorities for all those perceived to be engaged in ostensibly 'unproductive vagrancy'.[18] Housing numerous chauvinist associations and assumptions, the term 'Gyspy' operated as a term of convenience and a repository for knowledge claims about numerous sub-communities that often had little in common beyond a peripatetic lifestyle. Legally, its usage as a synonym for vagrancy—*Landstreicherei* or *Umherziehen*[19]—mirrored its usage in neighbouring France, where anti-Gypsy measures too related to 'Bohémiens, nomades et vagabonds'.[20] As the *Augsburger Postzeitung* bluntly advised in 1895, 'in our complaints, we need not anxiously differentiate between real Gypsies and pseudo-Gypsies. Both of these hordes of pests are the same in their intention to unabashedly beg and brazenly steal'.[21]

In this sense, the 1908 case of the circus owner Alois Traber, is instructive. Despite belonging to a renowned family of circus performers who had performed all over Germany for several generations, Traber found himself declared a stateless foreigner by the Bavarian government when he was unable to produce the kind of identification papers that the state's sedentary population accumulated as a matter of course.[22] 'Gypsy' was an organizing concept used for the categorizing and policing of a subaltern social segment perceived as having a particular mode of social transgression in common rather than a stable description of a recognizable ethnic or national community, a view that persisted well beyond World War One.[23] Indeed, some have argued that those targeted by the German states under the rubric of 'Gypsies' might profitably be seen as a projection of the anxieties of Europe's sedentary middle classes,[24] a community of difference comprised of members of a highly mobile and broadly unpopular subsection of Europe's labour market, who, due to their peripatetic lifestyle

Film, Wilhelm Fink, Munich, 2009, pp. 210–16; Breger; *Ortlosigkeit des Fremden*, p. 3; Karl Hölz, *Zigeuner, Wilde und Exoten. Fremdbilder in der französischen Literatur des 19. Jahrhunderts*, Erich Schmidt Verlag, Berlin, 2002; Uerlings and Patrut, *'Zigeuner' und Nation*.

[17] For a collection of early German documents on the appearance of Gypsies in various German regions, see Richard Breithaupt, *Die Zigeuner und der deutsche Staat. Ein Beitrag zur deutschen Rechts- und Kulturgeschichte*, CJ Becker's Universitäts-Buchdruckerei, Würzburg, 1907, pp. 22ff.

[18] Breithaupt, *Die Zigeuner und der deutsche Staat*, p. 14.

[19] See, for example, the trial of the Petermann band, 16 December 1892 in Landesarchiv Nordrhein-Westfalen, Düsseldorf (LANW), Regierung Düsseldorf Nr 8905.

[20] Albrecht, *Zigeuner in Altbayern 1871–1914*, p. 132.

[21] *Augsburger Postzeitung*, 16 März 1895, 'Die Zigeunerplage'.

[22] BHStA, MF 67417. Zigeuner. Heimat, Staatsangehörigkeit, Sicherheitspolizei, 1883–1936.

[23] Höhne, *Die Vereinbarkeit der deutschen Zigeunergesetze*, p. 8. Writing during the Weimar era, Höhne argued that legally the state of being a 'Zigeuner' was a behavioural, not a racial designation. He did so, it must be said, in order that he might demonstrate that discriminatory laws against the Gypsies would not be unconstitutional; that is to say contrary to Article 109, Section 3, § 1 of the Weimar Constitution that guaranteed that no one could be discriminated against due to their position at birth. For this reason he advocated the use of the clearly behaviourist term '*Wanderzigeuner*.' Höhne, *Die Vereinbarkeit der deutschen Zigeunergesetze*, pp. 11–13, 102–3.

[24] Both Rainer Hehemann and Joachim S. Hohmann describe this fictive threat of a 'Gypsy plague' as a form of 'collective paranoia'. See Hehemann, *Die 'Bekämpfung des Zigeunersunwesens'*, p. 468; Joachim S. Hohmann, *Zigeuner und Zigeunerwissenschaft*, Guttandin & Hoppe, Marburg, 1980, p. 16.

were extraordinarily effective at filling niche roles in their host economies, but, as economically marginal figures, also dabbled in petty crimes against property.[25] This criminality was, however, typically exaggerated and was often ascribed rather than actual, as one uncharacteristically sympathetic article in the *Bayerischer Kurier* in 1895 made clear:

> A few days ago some Gypsy wagons arrived here, with several partially dark-skinned people. Immediately thereupon, one of their wenches visited several houses to buy milk. After she had left, 63 Marks was found to be missing from one house and it was claimed by the owner that the dark-skinned woman had used magic to take the money. After it had been established that the wench had not been near the repository for the money, the local watch refused to believe in this 'magic', and searched the personal effects of the owner only to find the supposedly magically removed money amongst them.[26]

With such a culture of mistrust and alarm in mind, the following analyses the variations in media, governmental, and civil society constructions of 'Gypsies' as a criminal sub-population deserving of expulsion during the late nineteenth and early twentieth centuries.

Crucially, the strongest push for eradicating Gypsies from Germany came from the press, which constantly reported on an ostensible *Zigeunerplage* (Gypsy plague), whilst insisting that their coverage was an accurate representation of the fears of the public—a claim impossible to test. Easier to test, however, is the extent to which media claims of a national Gypsy menace mirrored governmental appraisals of the facts. Although press reports of a serious 'national plague' of Gypsies abounded during the 1890s, when Prussian local authorities were asked by their provincial and state superiors in 1893 and repeatedly thereafter to actually quantify the numbers of Gypsies that moved through or stayed in their region, the answer was in almost all regions virtually none.[27] Arguably, the media's role was that of constructing or reflecting a sense of threat and then advocating a solution to it, through their calls for authorities to stiffen their approach to this 'plague'. In August 1897, for example, the *Pfälzische Presse*, demanded that the state place Gypsy bands under surveillance and confiscate their property, so as to effect 'a cleansing of the region from Gypsy bands'.[28] A month earlier, the *Augsburger Postzeitung* too had stated:

> We want to bring to the attention of the competent authorities . . . the Gypsy menace and in the interests of the entire nation, in the interests of the law and public morality proclaim: *Videant consules*! Surely our modern state, with its fine and highly organised police powers, is in the position to eliminate or at the very least minimise such a demoralising nomadic way of life, this plague, which is a true travesty of our much praised and highly developed cultural standards. This is not just our private

[25] Leo Lucassen, 'A Blind Spot. Migratory and Travelling Groups in Western European Historiography', *International Review of Social History*, 38, 1993, pp. 209–35.
[26] *Bayerischer Kurier* on 11 February 1895.
[27] LANW, Regierung Düsseldorf Nr 8905, Nr 30446.
[28] *Pfälzische Presse*, 15 August 1897.

> opinion, but an expression of real public opinion, which might be confirmed by anyone who understands the situation we have described.[29]

If the press took a consistently populist and alarmist line, the response by the German *Reichstag* and the state assemblies was marked by a commitment to the rule of law on the one hand and a determination to destroy the phenomenon of nomadism in a sedentary society via the application of laws and regulations on the other. It is certainly true that legal discrimination against Gypsies had deep roots in pre- and early nineteenth-century law (particularly Prussian and Bavarian law) which had originally situated Gypsies as alien to the state and external to the protection of its law; *vogelfrei*.[30] Yet this form of legal discrimination was replaced during the nineteenth century as it came into conflict with modern legal sensibilities that centred on the concept of the citizen. Albeit gradually and unevenly, German Gypsies (that is, Gypsies with German citizenship) were certainly able to exercise the rights bestowed upon them by virtue of their status as citizens after 1871. Indeed, this process had begun in the various German states prior to unification; by the mid-nineteenth century Gypsies were no longer *vogelfrei*, but rather imbued with a form of subject status that offered the legal protections of the *Rechtsstaat*.[31] Illustrating this gradual shift in status was an 1842 legal case, when a Prussian Gypsy in a de-facto relationship with a non-Gypsy woman applied to formalize their relationship, he was initially refused permission to marry on the grounds of a local regulation dating back to 1573 that pronounced 'heathens, Gypsies and Jews' to be '*vogelfrei*'.[32] After the Prussian Gypsy

[29] *Augsburger Postzeitung*, 3 July 1897, The phrase 'videant consules' is a reference to the Latinism *videant consules ne res publica detrimenti capiat*—let the consuls see to it that the state does not suffer harm.

[30] See, for example, the measures outlined for their expulsion from Bavaria, 7 February and 20 March 1800, 16 December 1801, 28 November 1816. BHStA, MA 55998. Recently, it has been argued that this determination to rid Germany of its Gypsies saw their status as corresponding almost directly to Agamben's notion of the *homo sacer*—the man that cannot be sacrificed or executed, because they have no status under law. As the following makes clear, this was not the case during the *Kaiserreich*. See Simon Constantine, 'Particularities of Persecution. The Policing of Gypsies in Saxony 1871–1914', *Immigrants and Minorities* 32(1), 2014, p. 41; Jennifer Illuzzi, *Gypsies in Germany and Italy, 1861–1914: Lives Outside the Law*, Palgrave, New York, 2014; Illuzzi, 'Negotiating the "State of Exception"', pp. 418–38; Roswitha Scholz, 'Homo Sacer und "die Zigeuner". Antiziganismus—Überlegungen zu einer wesentlichen und deshalb "vergessenen" Variante des modernen Rassismus', *EXIT!* 4 June 2007, viewed 24 March 2014 at <http://www.exit-online.org/link.php?tabelle=schwerpunkte&posnr=184>.

[31] Illuzzi of course does not deny that the precepts of the *Rechtsstaat* were preserved, but argues that this preservation itself was tactical and contributed to the casting out of German Gypsies (or in Agamben's language the reduction of the Gypsies to the status of *homines sacri*), by enforcing the prohibitions on behaviours deemed 'Gypsy', thereby creating 'categories of exclusion' which allowed 'the executive to create a state of exception to deal with particular individuals outside the law'. This seems not to be the case with German Gypsies, where a state of exception was purposively avoided. In this case too, the division (and subsequent conflation) of bare life and political existence which lies at the core of Agamben's theory seem inoperative. See Illuzzi, 'Negotiating the "State of Exception"', pp. 420–1, 438.

[32] The most famous declaration of the early modern period that Gypsies were outside the law was that of the *Reichstagen* of Lindau and Freiburg in 1496–98, on the grounds that they were Ottoman spies. This decision was later supported by Emperor Maximilian I in the Augsburg *Reichstag* of 1500. See Aichele, *Die Zigeunerfrage*, pp. 40–3; Joachim S. Hohmann, *Verfolgte ohne Heimat. Geschichte der Zigeuner in Deutschland*, Peter Lang, Frankfurt, 1990, p. 17.

complained, the Prussian Ministry for the Interior ruled in his favour, deciding that the Gypsy was 'a Prussian subject, and as such enjoyed the citizen rights of all in this category, including the right to marry freely, without being hindered by a sovereign ban based on his national origin'.[33]

Nonetheless, just as some of the more overt legal prejudices of the early modern period were being redressed, new forms of social and juridical control, such as those hinted at by the *Augsburger Postzeitung* were being imposed by various German states, as well as by the new nation-state itself. The lives of Gypsies became increasingly subject to state interference and legal restrictions, targeting specific behaviours deemed unacceptable in a modern society. Indeed the long-standing myth of a 'Gypsy plague' that had characterized popular and political discourse in many German states prior to unification, was revamped so as to assist in the attempt to stabilize German national identity through the stigmatizing and criminalizing of 'Gypsy' behaviours such as itineracy that ostensibly posed a threat to German society.[34] Also tendered as a negative trait (without a trace of self-reflexive irony) was that the morality, laws, and religion of others were incomprehensible to Gypsies. So too, it was asserted, concepts such as honour, Fatherland, and nation were simply unknown to them. Above all, there persisted the notion that Gypsies would not work.[35]

To deal with these undesired traits, German governments tried a range of management approaches with Gypsies, which were usefully systematized by Aichele in 1911. Initially, he argued, German governments were motivated by paternalism (pre-1862), in which they attempted to fashion 'orderly citizens' out of Gypsies through integration programmes. Thereafter came the period of individualism (1862–79) during which Gypsies were treated as individual citizens who enjoyed the same rights of freedom of movement and freedom of occupation as other citizens, without reference to their socio-cultural alterity. Finally, from his vantage point, came the period of strict legal control (post-1879), wherein Gypsies, as a discernible social segment, were singled out as requiring a more stringent regime of regulation.[36] From Aichele's perspective, the most effective means for encouraging the assimilation of Gypsies was a mix of paternalism for young Gypsies (as per the first period) mixed with strict legal controls and a stern regime of 'deterrence' (*Abschreckung*) for the inveterate offenders of the older generation (as per the post-1879 regime).[37] Whilst the deterrence rested upon close surveillance and policing of Gypsies by local police and authorities, the paternalism was intended as '*Fürsorgeerziehung*' which rested upon the compulsory socialization of children from Gypsy families in a non-Gypsy environment—that is to say, the forced removal of children from Gypsy families and environs. This '*Zwangserziehung*' (as Aichele labelled it) rested upon the premise that 'whoever holds the children holds

[33] Hohmann, *Verfolgte ohne Heimat*, pp. 73–4.
[34] Hehemann, *Die 'Bekämpfung des Zigeunersunwesens'*, pp. 89–90.
[35] Aichelle, *Die Zigeunerfrage*, p. 24.
[36] For further detail, see Aichele, *Die Zigeunerfrage*, pp. 63–87.
[37] Aichele, *Die Zigeunerfrage*, p. 90.

the future'. For Aichele a strongly interventionist biopolitical approach was required to regulate, either with carrots or sticks (*Rute und Apfel*), the way of life of the 'child-like' German Gypsies in a manner which ensured consistency and stringency and which would assist in ensuring that 'Gypsies remained inside the limits of order'.[38] Above all, his nightmare scenario was a return to the untrammelled freedoms of the 1860s and 1870s, when Gypsies shared the same set of legal parameters as other citizens of the German states.[39]

What Aichele's study illustrates is not only the assumption that state regulations had an important role to play in bringing an end to the Gypsies' way of life, but also his sense that this state intervention could actually work, in successfully correcting 'Gypsy' behaviours. Through recourse to transition programmes and occupations that were tailored specifically to recalcitrant Gypsy individuals and communities, they might be brought to embrace settled life. 'The delicate task remains,' he wrote, 'of choosing occupations that represent a bridge between the old gatherer economy and orderly professions, so that no overly regulated efforts are demanded of them, but which possess the requisite discipline to keep the Gypsies inside the limits of order.'[40]

Some of the difficulties emerging in the regulation of non-German Gypsies stemmed from the issue of jurisdiction. The general principle adhered to by the various governments comprising the empire was that non-German Gypsies were best managed by denying them entry into the empire and through their routine expulsion if they were found residing in Germany. Legally, the competency for expulsions rested with the individual states, hence all expulsions of Gypsies had to be conducted by state governments rather than the national government. Nonetheless, several attempts were made to build a national approach towards the *Zigeunerfrage* through a coordinated legal response. An interstate communiqué and agreement from 18 November 1870 confirmed that border officials should refuse entry to the empire by Gypsies and that police authorities should expel those already there. These measures were reconfirmed on 31 October 1883 with an Interior Ministry instruction that the entry of Gypsies from outside Germany be blocked. Again on 1 July 1886 the Chancellor's Office and Interior Ministry requested the various German state governments that they adhere to the 1870 agreement and deport all Gypsies who were still residing in Germany without German citizenship (or the means to demonstrate it), an instruction reiterated in September 1889. To control domestic, citizen Gypsies it was requested that all governments deny them the licences required of itinerant workers, the *Wandergewerbschein*, and that recalcitrant adult Gypsies be confined to workhouses with their children forced into school attendance.[41] Given the right

[38] Aichele, *Die Zigeunerfrage*, p. 102.

[39] Aichele, *Die Zigeunerfrage*, p. 92. 'Gewiß wollen und dürfen wir nicht in die Utopien der 1860 und 1870er Jahre verfallen.' On the other hand he was not impressed with suggestions that Gypsies be transported to a penal colony on one of Germany's Pacific islands. Such a 'Pacific Solution' for the removal of this unwanted minority seemed to him not only impractical but also unlawful. See p. 93.

[40] Aichele, *Die Zigeunerfrage*, p. 102.

[41] Bismark/Interior Ministry to Ministerium des k. Hauses und des Außern, 1 July 1886, in BHStA MA 59999. See too Martin Luchterhandt, *Der Weg nach Birkenau: Entstehung und Verlauf*

to the freedom of movement (*Freizügikeitsrecht*) held by German citizens, and the difficulty of ascertaining precisely who was a Gypsy and who was a 'legitimate' itinerant worker, the implementation of these measures proved controversial.[42] From 1870 onwards, however, the legal divide between foreign Gypsies and citizen Gypsies was the fundamental pillar of the German attempt to coordinate the states' legal approaches to their control. This legal distinction, focused on maintaining only the barest of the rights of the citizen by sparing them from expulsion, was one that was constantly reiterated in all subsequent political and legal discussions which aimed to establish, without much luck, a national approach to Gypsies.

Although expulsions lay outside its jurisdiction, the *Reichstag* often discussed the *Zigeunerplage* between 1905 and 1912, in the process reposing the German states' 'Gypsy question' as a national question.[43] Notwithstanding the severity of the detention and expulsion measures consistently meted out by the various German states, most notably Bavaria, the deputies of various German assemblies also found themselves in the position of having to withstand calls for ever more radical measures made by the press or parties of the far Right which opportunistically attached themselves to the issue. Initially the issue was pursued by fringe and/or anti-Semitic parties such as the *Deutschsoziale Partei, Christlich-Partei*, and *Deutsche Reformpartei*, as well as smaller, rural parties such as the *Bund der Landwirte* and the *Bayerische Bauernbund*. Members of all these parties signed the vague and failed motion of the notorious anti-Semite Max Liebermann von Sonnenberg on 7 December 1905 which effectively called for the *Reichstag* to do that which it had been doing since 1871; namely to work together with the governments of all the German states to 'combat the increasingly alarming Gypsy menace'.[44] Liebermann spoke briefly to this theme on 12 December 1905 in a speech to the *Reichstag* that moved erratically between an attack on August Bebel, the Morocco Crisis, the role of Jews in the 1905 revolution in Russia, the plight of Germans in Riga, and an endorsement of Lothar von Trotha's genocidal warfare in Southwest Africa. Amidst his checklist of extremist themes, two short paragraphs dealt with the ostensible need for a systematic nationwide approach to the 'Gypsy problem'. His specific complaint was that Gypsies had never been dealt with at a national level, but were instead continuously pushed over the various state borders within the Reich, whereupon they would be scrutinized by local officials and pushed over into yet another neighbouring state.[45] Liebermann made the same demand in 1907, this time as part of the *Wirtschaftliche Vereingigung*, insisting that the Interior Ministry ensure cooperation with the various state

der nationalsozialistischen Verfolg der 'Zigeuner', Verlag Schmidt Römhild, Lübeck, 2000, p. 19; Höhne, *Die Vereinbarkeit der deutschen Zigeunergesetze*, pp. 104, 176.

[42] See for example the doubts expressed about the legality of this measure by the Bavarian Interior Ministry, 27 January 1885 in BHStA MA 59999.

[43] See Bonillo, *'Zigeunerpolitik'*, pp. 71–216.

[44] Aktenstück Nr 127, 7/12/1905, *Verhandlungen des Reichstages*, Bd 221.1905/6, p. 1895.

[45] Liebermann von Sonnenberg, 12 December 1905, *Verhandlungen des Reichstages*, Bd 214. 1905/6, p. 235.

governments in order that the prevailing 'Gypsy menace' be combated in a united fashion, a proposal which also found no significant support.[46]

In 1909, however, the debate took a more serious tone and was led by the Centre Party's Wilhelm Frank, who complained bitterly about what he saw as the injustice of expelling well-trained and socially useful Russian Poles, while 'murderous' Gypsies continued to plague the nation.[47] Listing examples of what he claimed were violent Gypsy crimes, he argued that 'fear and terror grips every village when the cry goes up "the Gypsies are coming". Just as terror once gripped Rome with the cry "*Hannibal ante portas*", so it is here for every village, every house and every family when a Gypsy band nears.' Frank demanded that Gypsies, whom he simplistically assumed had all come from the Austro-Hungarian Empire, be simply pushed back across the border, and that the Foreign Office enter into an arrangement with the Habsburg Monarchy to ensure that Gypsies were stopped from coming across the border.[48] In this, Frank was supported by the Conservative Count Hans Wilhelm Alexander Kanitz, who also recounted that the 'Gypsy plague' affected East Prussia. 'These people are a true calamity for the entire region,' he complained, adding he could only agree with Frank that 'energetic measures be finally taken against this problem'. Importantly, this was not because Kanitz was in favour of closed borders more generally. Indeed, having agreed with Frank on the Gypsy question, von Kanitz went on to complain bitterly of the paucity of decent border crossing points with Russia that would facilitate more profitable cross-border labour exchanges with the east.[49]

The State Secretary of the Foreign Office, Baron Wilhelm Schoen, who was in attendance, readily agreed to open up the borders with Russia to seasonal workers, however when it came to the Gypsy question, he was far more circumspect, insisting that it lay outside the competence of the Foreign Office to deal with this. Anecdotally he also recalled his own experience in attempting (without success) to establish the actual nationality of Gypsies in Foreign Office dealings with Switzerland. He did, however, agree that it was desirable that all efforts should be made to 'free German soil from this plague'.[50] Despite Schoen's firm insistence that the Foreign Office was not the correct government agency for dealing with Gypsies, the debate continued with Wilhelm Varenhorst of the *Deutsche Reichspartei* requesting that the Foreign Office deal with Gypsies in Hanover and Schleswig-Holstein; Gypsies that he argued were most certainly foreigners and as such eligible for expulsion, whereupon von Schoen stressed once more that the correct agency to deal with this local issue were the provinces' local police authorities.[51]

[46] Antrag Nr 28. Liebermann von Sonnenberg, Dr Böhme und Genossen, 19 February 1907, *Verhandlungen des Reichstages*, Bd 239, 1907, p. 20.
[47] Wilhelm Frank, 31 March 1909, *Verhandlungen des Reichstages*. Bd 236, 1909, pp. 7890–2.
[48] Wilhelm Frank, 31 March 1909, *Verhandlungen des Reichstages*, p. 7891.
[49] Hans W. A. von Kalitz, 31 March 1909, *Verhandlungen des Reichstages*, Bd 236, 1909, p. 7891.
[50] Wilhelm von Schoen, 31 March 1909, *Verhandlungen des Reichstages*, Bd 236, 1909, p. 7892.
[51] Wilhelm Varenhorst/Wilhelm von Schoen, 31 March 1909, *Verhandlungen des Reichstages*, Bd 236, 1909, p. 7892.

The debate was renewed once again in 1910, after the Centre Party's later wartime Chancellor Georg von Hertling proposed a resolution to the effect that the nomadic activities of 'Gypsy bands' be forbidden. Refusing to be persuaded by the talk of a Gypsy crisis, however, the State Secretary of the Ministry of the Interior, Clemens Delbrück, made light of the discussion, joking on 24 February 1910 that 'the Gypsy plague is one of the plagues that has followed me throughout my long political career'. He went on to note that Gypsies without German citizenship had for several decades been subject to expulsion orders and would continue to be expelled, whilst those Gypsies with German citizenship should not be subject to any 'exceptional laws' (*Ausnahmengesetze*) which would undermine their citizen rights.[52] Despite the Interior Minster's opposition to introducing exceptional laws, the proposal was introduced once again in early March by Wilhelm Frank, who complained bitterly about the lack of action in the past year, asking rhetorically of the commitment given a year earlier to liberate Germany of the Gypsy plague, 'What has happened to this liberation? Has the German Reich really been freed from this plague?' Wielding a dossier of sixty-eight newspaper articles reporting the harm done by Gypsy crimes, Frank related how his constituency had been 'tormented by these scorpions' and insisted that more radical steps be taken; perhaps making further use of the workhouses, perhaps even taking up the suggestion of the German Colonial League, that Gypsies be sent to a penal settlement established on one of Germany's Pacific island colonies.[53]

Represented by Friedrich Brühne, the Social Democrats made clear that they would not be voting for anything like exceptional measures. So too the Conservative Baron Carl von Carmer-Zieserwitz, while heartily recommending the passing of the Centre Party resolution, made it clear that no '*Ausnahmegesetze*' (exceptional laws) were being proposed, but rather a system of intense police surveillance and regulation. Against the will of the Social Democrats, the resolution was passed.[54] After this, Chancellor Bethmann Hollweg committed himself to presenting a law to deal with the '*Zigeunerunwesen*'—a bill that never eventuated.[55]

In the aftermath of the January 1912 election, Gypsies were once again the target of *Reichstag* attention. In language almost identical to that of 1909 and 1910, the German Conservative Party opened the new *Reichstag* with a request on 7 February that the chancellor promulgate a law forbidding the 'itineration of Gypsies in bands'.[56] Not to be outdone, the Catholic Centre Party continued its stance against the 'Gypsy menace' on 14 February 1912, when eighty-nine

[52] Clemens Delbrück, 24 February 1910. *Verhandlungen des Reichstages*, Bd 259, p. 1520. Bonillo sees Delbrück's position as a principled stand against the rasher anti-Gypsy statements made within the *Reichstag*. At no point did Delbrück distance himself from anti-Gypsy measures, only from the suggestion that federal *Ausnahmegesetze* were appropriate. See Bonillo *'Zigeunerpolitik'*, pp. 190–5.

[53] Wilhelm Frank, 2 March 1910, *Verhandlungen des Reichstages*, Bd 260, p. 1648–50. Frank sent the chancellor his dossier of newspaper reports. GStAPK IHA Rep77 Tit 423 Nr 53 adh2 Bd 5, p. 367.

[54] See Sitzung, 2 March 1910, *Verhandlungen des Reichstages*, Bd 260, pp. 1648–53.

[55] See also Till Bastian, *Sinti und Roma in Dritten Reich*, CH Beck, Munich, 2001, pp. 23–4.

[56] Antrag Nr 35 v. Norman und Genossen, 7 February 1912, *Verhandlungen des Reichstages*, Bd 298, 1914, p. 90.

of the ninety-one Centre Party representatives signed Franz Schaedler's *Reichstag* submission that 'the federation of states seek to take effective measures to stop the molestation of the rural population by nomadic bands of Gypsies'.[57] This was supported by Conservative and Reform Party representatives on 4 and 5 March of 1912, who praised the Centre Party for their perseverance.[58]

On 18 March, the Centre Party's Carl Diez reiterated his party's desire for a national anti-Gypsy law, warning the *Reichstag* that 'the damage that the Gypsies do is enormous' and demanding, in accordance with Schaedler's 14 February submission, that Gypsies be banned from living in an itinerant fashion and stopped from using documents that suggested they were travelling for work purposes (*Wandergewerbescheine*). Alongside these measures, Diez argued, measures for the forced removal of Gypsy children from their families needed to be introduced immediately. With this, he recommended Schaedler's resolution to the *Reichstag*.[59] At this point, Clemens Delbrück re-entered the debate to report on some reforms that had recently assisted in the 'legal fight against the Gypsy menace', including a national initiative led by Bavaria which included sharing intelligence on the movements, criminal records, and licensing of the Gypsies nationally. Further, Delbrück announced, many states had moved to ban Gypsy itinerancy and he expected more to do so in the future. The picture he offered was that the problem was in the process of being resolved.[60] Undeterred, Johann Rupp of the *Wirtschaftliche Vereinigung*, then portrayed Gypsies as murderers and thieves who used their travel documents as a cover for their crimes. He also advocated the passing of exceptional laws (*Ausnahmegesetze*) to protect rural communities, arguing that they were required to deal with this 'plague once and for all'.[61] Once again, a majority of the *Reichstag* passed Schaedler's and the Centre Party's resolution, to little effect. Nevertheless, by 22 May 1912, reports of Gypsy activity were once again brought to the attention of the *Reichstag*, this time by Ludwig Werner of the Reform Party, who once more insisted that drastic measures be taken. Radicalizing the tone, he warned that 'only the military will bring an end to the Gypsy problem'.[62]

Despite the *Reichstag*'s oft proclaimed desire to find a national solution to the 'Gypsy menace,' actual anti-Gypsy measures, including expulsions, always remained the prerogative of the individual *Länder*, and the legal status of Gypsies who were *Staatsbürger* continued to vary across state borders.[63] The

[57] Antrag Nr 106, 'Dr Schaedler und Genossen', 14 February 1912, *Verhandlungen des Reichstages*, Bd 298, 1914, p. 160, formalized as a resolution on 29 February 1912. See Antrag 227 *Verhandlungen des Reichstages*, Bd 298, p. 218.

[58] Ludwig Werner, 4 March 1912, *Verhandlungen des Reichstages*, Bd 283, 1912, p. 440; Georg Oertel, 5 March 1912, *Verhandlungen des Reichstages*, Bd 283, 1912, p. 466.

[59] Carl Dietz, 18 March 1912, *Verhandlungen des Reichstages*, Bd 284, 1912, pp. 766–7.

[60] Clemens Delbrück, 18 March 1912, *Verhandlungen des Reichstages*, Bd 284, 1912, p. 767.

[61] Johann Rupp, 18 March 1912. *Verhandlungen des Reichstages*, Bd 284, pp. 768–9.

[62] Ludwig Werner, 22 May 1912. *Verhandlungen des Reichstages*, Bd 285, 1912, p. 2253.

[63] The most concise illustration of anti-Gypsy laws is Martin Luchterhandt's state by state, chronologically ordered table of 'Sondermassnamen' against Gypsies in Luchterhandt, *Der Weg nach Birkenau*, p. 343, which is based on the Werner Höhne's 1929 exhaustive discussion of state discrimination against Gypsies.

varied treatment of Gypsies throughout Germany before World War One, therefore, was a product not only of the piecemeal elimination of seventeenth- and eighteenth-century forms of discrimination against Gypsies that dealt with them as self-evident '*Landesfeinde*',[64] but also corresponded to the unevenness of decisions taken at a state level on how to deal with the particular level of Gypsy migration and activity within their borders.

As the state which housed the largest number of Gypsy citizens, it is unsurprising that contemporaries saw Bavaria as 'marching at the forefront of the struggle against the Gypsies',[65] with numerous measures promulgated there in the last quarter of the nineteenth century which would not be replicated in other German states until after the turn of the century.[66] Building on a legal framework established in 1867 and 1868, Bavaria sought to expel all Gypsies of non-German nationality, beginning from 12 January 1871. One of the difficulties facing Bavaria in its attempts to remove non-citizen Gypsies, however, was how to establish their actual state of origin and citizenship status prior to repatriation. As in the case of the ostensibly Bulgarian Staganos family, the lack of identity papers hampered the expulsion of many Gypsy families from Bavaria. When, for example, the Bavarian authorities decided to expel the Gomann and Komanas families back to France, their putative place of residence in 1878, their attempts were severely hampered by the difficulty of establishing with any degree of certainty that they were actually French citizens. Without this proof, there was no guarantee that the French authorities would accept them. As a result, their expulsion took almost six years, not taking effect until April 1884.[67]

Bavaria's precocious turn to modern surveillance techniques, however, helped considerably in overcoming these difficulties. By 1878, all 'wandering beggars, vagrants, Gypsies or such persons' became official targets for special scrutiny by the Bavarian police, as the state demanded the collection of personal information about Gypsies and their origins. In July 1881, the Bavarian Ministry of the Interior notified its regional police authorities that, in order to assist in the repatriation of foreign Gypsies to their country of origin, a thorough and detailed investigation into the identity and personal attributes of members of encountered Gypsy bands was to be undertaken:

> It has been noticed that with the inquiries and recording of the relationships of people of unknown origin, whose identity and circumstances need to be established by diplomatic means, the requisite circumspection and thoroughness has not been applied to assist in these investigations and to ensure the success of these negotiations. It is

[64] Joachim S. Hohmann, *Geschichte der Zigeunerverfolgung in Deutschland*, Campus Verlag, Frankfurt, 1981, pp. 33–42.

[65] Aichele, *Die Zigeunerfrage*, p. 84.

[66] The most comprehensive study of the treatment of Gypsies in Bavaria is Angelika Albrecht's *Zigeuner in Altbayern 1871–1914*. See also Eva Strauß, *Die Zigeunerverfolgung in Bayern 1885–1926*. Unpublished dissertation, Ludwig-Maximilians-Universität, Munich, 1986.

[67] BHStA MA 59998 (unnumbered), Staatsministerium des Innern correspondence from 1 January 1878, 6 January 1878, 7 January 1878, 10 January 1878, 15 January 1878. See too MInn 66434.

> therefore urged, to pay attention to the following: In the first instance it is required in such cases to ascertain first and surnames, place and time of birth, trade, profession or occupation, nationality, address and place of residence, as well as the profession, age, nationality, address, place of residence, time of death etc. of their parents, children, siblings, as well as to describe in as much detail as possible their personal description including any distinguishing features.[68]

All of these measures were reinforced in 1885 and 1886, whilst the bearing of arms was banned for Gypsies in Bavaria in 1887. The surveillance and control of Gypsy animals and wagons was also introduced during the late 1880s and early 1890s, as was the removal of Gypsy children from their families during periods of incarceration.

This increased surveillance facilitated the successful expulsions of a number of Gypsy families, beginning with those of the Simon family in 1885 and the Schmid family in 1886.[69] By October 1889, the Bavarian Interior Ministry was applauding the fact that the stronger new control measures had seen the reduction in the number of foreign bands arriving and the improved behaviour of domestic ones. Urging renewed efforts, it declared:

> If we cannot speak here of a successful and thoroughgoing cleansing of the state, so might we hope for a further reduction and curbing of their appearance through constant and continued strict control and surveillance of Gypsy bands and the energetic prosecution of all offenses that they commit. It is therefore ordered to continue the combating of Gypsydom with all vigour and through strict application of the given instructions to further the gradual reduction of this scourge. In particular the immediate and unconditional expulsion of foreign Gypsies over the imperial borders is emphatically recommended as a very useful weapon.[70]

These initial surveillance and control mechanisms also led to the creation of a public database of the descriptions of individual Gypsies and their familial connections that had been gathered by police and other regional authorities in Bavaria. Alfred Dillmann had begun systematizing the state's accumulated knowledge of individual Gypsies in 1886 on behalf of the Bavarian Interior Ministry and Police Office. These data were eventually published by Dillmann in the form of a manual detailing not only every ordinance with which Gypsy Germans had to comply, but also the names, personal details, criminal records, and in some cases even photos of every Gypsy known to the police.[71] After almost two decades of work, the capstone of Bavaria's anti-Gypsy surveillance was introduced in 1905—Alfred

[68] Amstsblatt des k. Staatsministeriums des Innern 12 July, 1881 in BHStA, MA 59999. 'Bekanntmachung. Das Verfahren bei Ermittlung und Feststellung der Identität und Zuständigkeit von Personen unbekannter Herkunft betr. Kgl. Staatsministerium des Kgl. Hauses und des Aeßern, der Justiz und des Innern.'

[69] BHStA, MA 59999, MInn 66434.

[70] Amtsblatt des k Staatsministerium des Innern 28, 12 October, 1889, Nr 13177 in BHStA MA 59999.

[71] Dillmann's abbreviated and largely illegible notes are contained in his diaries spanning the period 1873–1911 in Stadtarchiv München (StAM) *Nachlaß Dillmann* Tagebücher 4ff. For the details of particular cases during the early years of the twentieth century, see BHStA MF 67417.

Dillmann's *Zigeuner-Buch*. This key tool for the policing of German Gypsies was perhaps the most prominent pre-World War One German example of a governmental attempt to formalize and disseminate its surveillance of its own residents as a means of controlling a subsection of the population. With the *Zigeuner-Buch*, the ordinarily obscured nexus between the state's coercive power and bureaucratic knowledge was pushed to the fore, with Bavarian police carrying the book around with them in the course of their duties, as a means of identifying and dealing expeditiously with any Gypsies they should happen upon. Based upon French and Hungarian models,[72] the so-called Dillmann, originally consisted of 3,350 individual entries for Gypsies documented in Bavaria. By 1907 it had grown to a list of 6,031.[73] Despite the fact that Munich's Gypsy files were thrown out of the window of the police bureau and destroyed by the Spartacists at the end of April 1919, by 1926, this list consisted of around 14,000 individuals. By 1936, the number of Gypsies documented by Munich's *Zigeunerzentrale* was over 19,000. In 1942, it was still an important centre for the Nazis' assessment and transportation purposes.[74]

Local police authorities throughout Bavaria had been requesting such a tool for some years. The 'Dillmann' allowed those police likely to encounter Gypsies in the dispensation of their duties to assess whether they were dealing with foreigners liable to expulsion or German Gypsies who were subject to a different suite of coercive measures. Police in other states took a strong interest and, despite concentrating on Bavarian regulations, Bavaria soon came to be seen as a 'best practice' jurisdiction when it came to the management of the Gypsy population. Subsequently, the 'Dillmann' was widely adopted by other German states, which began to coordinate their intelligence on Gypsies with Munich. Prussia bought 410 copies for their own use when it first appeared in 1905, whilst Württemberg bought 395, Baden 215, Saxony 170, and Hessen bought 123. Further afield, 146 copies were ordered by Switzerland, and 416 by Austria-Hungary. Within Bavaria, officialdom was saturated with 2,987 copies sent out to local authorities.[75]

From the outset it was clear that the book's goal was not dispassionate scholarly analysis, but was expressly a tool of the state's anti-Gypsy measures. Dillmann himself declared it to be aimed at 'the alleviation of the Gypsy menace and [thereby] the raising of public safety'.[76] Its internal logic was simple; if all authorities knew something about every Gypsy they encountered—whether they were a German citizen, had a criminal record, belonged in Bavaria or in a different

[72] Albrecht, *Zigeuner in Altbayern 1871–1914*, p. 132.
[73] Breithaupt, *Die Zigeuner und der deutsche Staat*, p. 72.
[74] For the Spartacists' destruction of the files, see Albrecht, *Zigeuner in Altbayern 1871–1914*, p. 139. For 1926, see Udo Engbring-Romang, *Marburg. Auschwitz. Zur Verfolgung der Sinti in Marburg und Umgebung*, Marburger Stadtschriften zur Geschichte und Kultur, Vol 62, Marburg, 1998, p. 26. For the Nazi use of the files, see Robert Ritter, 'Die Bestandsaufnahmen der Zigeuner und Zigeunermischlinge in Deutschland', *Zeitschrift für Standesamtswesen. Personenstandsrecht, Eherecht und Sippenforschung* 22(10), 1942, p. 88.
[75] Albrecht, *Zigeuner in Altbayern 1871–1914*, pp. 133, 138–9.
[76] Dillmann, *Zigeuner-Buch*, p. 9.

state—they could make informed decisions about whether to expel them or, if they were citizens, the level of risk they posed to other citizens and what the best course of action was in dealing with them. To this end, by far the bulk of the content of Dillmann's *Zigeuner-Buch* was given over to the brief descriptions of every Gypsy known to Bavarian authorities, with Dillmann boasting that its contents were 'almost exhaustive'.[77]

Quite precisely, Dillmann enunciated for Bavaria's (and indeed Germany's) police and other officials precisely why this social segment was seen as requiring a particularly acute level of policing:

> The 'Gypsy plague' from which we are now suffering is characterised by the fact that a large number of bands of Gypsies and Gypsy individuals, who move here and there between the Austrian, Swiss and French borders under the cover of some trade or another, endanger public safety by their vagrant lifestyle. Apart from begging, the breaking of laws concerning hunting, the use of fields, forests and pastures, their dangerous spreading of disease, their unsafe use of fire and their deception (*Gaukelei*), these people are partial to thievery. Here opportunistic theft and shoplifting play a roll, as does planned larceny through counterfeiting. . . . Alongside this are dishonest horse trading . . . and the swindling of money for the healing of 'cursed' cattle and for assurances regarding the ascension of troubled souls.[78]

Clearly, the categories of transgression here belong to those of civic order, minor fraud, social hygiene, and petty theft. What was in question was not necessarily the foreignness (much less the biological essence) of the Gypsies, but their putatively anti-social behaviour; the communal nuisance that they ostensibly posed. It was with this in mind that the 'Dillmann' mandated particular forms of regulation to which Gypsies should be subjected; regulation unlike any experienced by other segments of the German population. In this context, the 'sixteen points' that Dillmann said guided the Bavarian approach to controlling Gypsies are worth citing:

1. Gypsies are to be subject to the strictest police surveillance and in the case of transgressing the law are to be penalised without leniency.
2. Non-German Gypsies, even if they have the correct paperwork and possess the necessary means of subsistence are to be refused entry at the Reich borders. If they have managed to enter the Reich, they are to be immediately and forcibly transported in the direction of their homeland or another suitable point on the Reich border. This is true for not merely Gypsy bands, but for smaller units and individuals, if they are recognisable by their external appearance or any other fashion as Gypsies.
3. Gypsies who claim to be German citizens but do not possess the requisite means of identification are also to be expelled across the Reich border . . .
4. The identifying papers of Gypsies are to be closely scrutinised. If issues arise from this or they are not in possession of their identifying

[77] Dillmann, *Zigeuner-Buch*, p. 9. [78] Dillmann, *Zigeuner-Buch*, p. 6.

papers, they are to be detained in order that their nationality can be determined…

5. The children of detained Gypsies must be brought to a reformatory for appropriate care.
6. The horses of Gypsies are subject to inspection by regional veterinarians as often as is deemed necessary.
7. Given legal requirements, attempts must be made to hand Gypsies over to the state police authorities for their removal to workhouses (in order to break up bands) or their expulsion from Germany using forced transportation, insofar as that is possible. To cover the mounting costs of moving, detaining and sentencing, the property of the Gypsies (for example money, jewellery, wagon, horses etc) might be used.
8. By the granting or extension of licenses for travelling workers (*Wandergewerbescheinen*), local government officials must perform a detailed investigation of the identity of the applicant. In particular, citizens must be authenticated through official means (for example through a valid passport or citizenship certificate) otherwise they cannot be included as companions. This also applies to women and children…
9. Licensing foreign Gypsies as travelling workers is absolutely forbidden.
10. German Gypsies are usually to be denied certificates as travelling workers under the provisions of Paragraph 57b of the *Reichsgewerbeordnung*. If a German Gypsy cannot be denied a licence as a travelling worker because of special conditions (for example if at the time of application they have a permanent address), their identity as a Gypsy is to be explicitly noted on the travel certificate.
11. Another ground for refusing a certificate as a travelling worker is if the Gypsy has one or more children and has not made adequate provision for their maintenance, or if they are of school-age, for their schooling…
12. In all cases where the providing or extension of a certificate for a travelling worker is sought by a Gypsy or a similarly itinerant person, or, where a Gypsy is attempting to circumvent the regulations governing certificates for occupational travel by registering in a non-itinerant profession for tax purposes, local finance office authorities must liaise with the relevant district officials before granting taxation certificates or provisional occupational tax statements. This largely applies when the business in question is one often undertaken by Gypsies and their like, such as umbrella maker, pot-mender, basket weaver, or trader in horses, soap, perfume, cleaning powder or greeting cards.
13. Regional authorities must ensure that they use due care in the acceptance of the business registration of itinerant persons, and in all cases undertake a thorough identity check. Business registrations that are obviously designed to circumvent the provisions of the certificate for occupational

travel are to be refused on the grounds that they fail to meet the conditions of a fixed-location business.

14. Temporary identity papers… may not be provided by regional or other police authorities. The parties concerned must apply for their identifying papers to be reissued or extended by the pertinent officials, where an investigation into the claims [regarding how the papers were lost] might be regularly undertaken.
15. In accordance with the conditions of Paragraph 58 of the *Reichsgewerbeordnung*, a certificate issued for occupational travel can be revoked. If an official believes that another official has issued identification papers against the conditions pertaining to the issuance of identification papers to Gypsies, the official must investigate the oversight and revoke the illegitimate identifying papers…
16. To further cooperation with the Württemberg State Government, district officials are to notify Württemberg's district officials of any provision of identity papers to Gypsies. For their part, Württemberg officials will similarly liaise with Bavarian officials to facilitate closer investigation…[79]

Alongside these broad regulations were guidelines for police agents as to what they should be looking for in their surveillance of Gypsies. Apart from immediately informing the Security Bureau of Munich's police headquarters as soon as a Gypsy band arrived in their area,[80] police were instructed to report on:

1. The particulars of the individual (particularly name, religion, marital status, occupation, address, place and date of birth, ethnicity, details relating to place and date of marriage).
2. Their identity papers, particularly for contents, date and issuance…
3. Accompanying horses and other animals, wagons or other notable items.
4. Origin and destination of itineration.
5. Noticeable actions, particularly punishable actions.
6. Police actions taken to initiate criminal investigations.
7. Information regarding the grounds upon which further legal harassment (in the sense intended by the anti-Gypsy resolutions) was not undertaken.[81]

Also for purposes of clarification, Dillmann summarized the fifteen most usual transgressions/pretexts for police action against Gypsies, most of which related to itineracy without the necessary paperwork, as well as provisions against begging, child labour, possessing firearms, and 'performing or exhibiting when the higher interests of art or the economy are not served'.[82]

[79] Dillmann, *Zigeuner-Buch*, pp. 10–13.
[80] Dillmann, *Zigeuner-Buch*, p. 13.
[81] Dillmann, *Zigeuner-Buch*, pp. 13–14.
[82] Dillmann, *Zigeuner-Buch*, pp. 15–16.

Not surprisingly, given that the emphasis of the *Zigeuner-Buch* was Gypsy criminality, the main lesson that Germany's premier pre-World War One academic expert on the Gypsies, Hermann Aichele, drew from the *Zigeuner-Buch* was that 'almost all adult Gypsies have criminal records'.[83] What a close reading of the regulations, suggestions, and descriptions offered by Dillmann demonstrates, however, was that it had become the responsibility of all Bavarian police and officials to draw upon a maze of regulatory requirements to legally harass all known Gypsies, whether possessing a criminal record or not, into leaving or if possible to offer suitable grounds for expulsion. Should they not move of their own accord, their papers were to be carefully scrutinized for omissions and their German citizenship was to be continuously questioned. If they could not sufficiently demonstrate their status as citizens, they ran the risk of being expelled and having their possessions confiscated to pay for the process. So too, the animals of Gypsies were to be subject to constant assessment for compliance, Gypsies' means of supporting themselves through itinerant labour were outlawed, their children were threatened with removal, and their families and communities split up and sent to work houses.

The Bavarian approach was unapologetically severe, with further means of halting the *Zigeunerplage* in Bavaria still being sought up until World War One and beyond, as numerous ministerial resolutions, announcements, and minutes show.[84] Indicative of Bavaria's ongoing commitment to placing severe regulatory pressure on Gypsies was the Munich Gypsy Conference of December 1911, which was attended by representatives from the police or security forces of all of the larger German states.[85] Amongst the main themes discussed were increasing the use of fingerprint details as a means of more efficiently monitoring Gypsies, and the creation of a centralized Gypsy intelligence service (*Zigeunernachrichtsdienst*). It was also in preparation for the conference that Dr Theodor Harster penned his treatise, the *Denkschrift über die Bekämpfung der Zigeunerplage* which would be printed as a self-standing publication in 1912.[86] In this position paper, apart from explicitly endorsing the view that Gypsies were to be identified according to behavioural rather than ethnic criteria, Harster stressed the need for stronger interstate and international cooperation. Unsurprisingly, he nominated Munich

[83] Aichele, *Die Zigeunerfrage*, p. 30.

[84] BHStA MInn 66435. See too Höhne, *Die Vereinbarkeit der deutschen Zigeunergesetze*, pp. 139–40. For Centre Party minutes, see for example the *Fraktionssitzung* of early October 1907, where the 'Zigeunerplage' was discussed in 'a lively discussion' with regard to attempts to improve labour relations. Dieter Albrecht (ed.), *Die Protokolle der Landtagsfraktion der bayerischen Zentrumspartei, 1893–1914*, Vol 4, 1907–1911, CH Beck'sche Verlagsbuchhandlung, Munich, 1992, pp. 14–17. See also the *Rechenschaftsbericht* from the Bavarian Centre Party of 14 November 1911, which reported that anti-Gypsy measures were included in a package of reforms aimed at improving the condition of agriculture in Bavaria. Albrecht, *Die Protokolle der Landtagsfraktion*, p. 395.

[85] As the following discussion makes clear, after the Prussians had caused difficulties for a Swiss conference in the previous year, many German states waited until Prussia had confirmed its involvement before agreeing to take part in the Bavarian meeting. For the invitations and preliminary discussions prior to the conference see BHStA MInn 66437 & MA 92790.

[86] For both the minutes of the meeting and the *Denkshrift*, see BHStA MA 92790.

as the pre-eminent site for a centralized bureau which would be tasked with controlling Germany's itinerant population. Central to its operations, he argued, would be the continued expulsion of non-German Gypsies and the strict certification and licensing of *bona fide* business travellers to ensure that no Gypsies were erroneously issued with warrants to travel.[87]

The assembled police authorities of Germany were able to almost unanimously agree on the consultative manner in which Gypsy expulsions might proceed. They agreed that:

> Expulsion of Gypsies is covered by the pertinent laws. It should, where possible, be enacted through the means of forcible transportation. Transportation to the imperial borders through the territory of another German state is only permissible when the transfer at the imperial border is certain or with the express approval of the other state. It is not permitted to forcibly transport Gypsies over the border of another German state which is neither obliged nor prepared to accept them. It is also not permitted to secretly push Gypsies over the borders of another German state, where their journey to another state is ordered and observed by the police. The direct or indirect use of force in the choice of destination is not permitted.[88]

Further details of how expulsions would be conducted were also laid out in the 1912 version of the memorandum which consolidated the conference's decisions. While stating very clearly that Gypsies with German citizenship were covered by the *Freizügigkeitsgesetz*, it warned local police and border authorities to be beware of falsified papers being used by foreign Gypsies on the border seeking entry or those inside Germany hoping to avoid expulsion. It also recommended extending the use of new biopolitical tools such as fingerprinting and photography as a means of combating identity falsification, measures that were still being introduced in 1913.[89]

Conceding the difficulties in expelling Gypsies into unwilling neighbouring countries, the *Denkschrift* advised of the necessity of further close negotiations with Germany's neighbouring states, in particular Austria-Hungary, Switzerland, and France.[90] In fact, cooperation with neighbouring countries had been the norm for some years, with Bavaria coming to a mutual agreement with Austria-Hungary in 1890, allowing Bavarian and Austrian authorities to expel Gypsies who had been apprehended shortly after entering their respective states.[91] In the years prior to 1911, however, this mutual agreement had deteriorated markedly, with Habsburg officials either refusing to accept the expulsion of Gypsies back over their border, or alternatively immediately expelling them back over the

[87] BHStA MA 92790. Albrecht, *Zigeuner in Altbayern 1871–1914*, pp. 167ff.

[88] 'Niederschrift über die Besprechung im KB Staatsministerium des Innern am 18 und 19 Dezember 1911, betreffend die Bekämpfung der Zigeunerplage', p. 17 in BHStA MA 92790. Only the representative of Saxony objected to the last sentence, due to that state's policy of dictating the destination to ensure a well-planned expulsion.

[89] *Münchner Neueste Nachrichten*, 7 June 1913.

[90] *Denkschrift über die Bekämpfung der Zigeunerplage*, pp. 8, 18–23, 25–7, 44 in BHStA MA 92790.

[91] Amtsblatt des StMdInn No 18, 27 June 1890, BHStA MInn 66435.

German border.[92] Cooperation with the Swiss too antedated the Munich conference by more than four years. By March of 1907, the Bavarian Interior Minister was already considering the Swiss idea that a joint Bavarian-Swiss approach to the 'Gypsy menace' might be necessary. A copy of the *Zigeuner-Buch* was sent to Bern and plans were made for Dillmann to meet with Swiss officials in an attempt to halt the border crossings of the region's Gypsies.[93] This international cooperation grew into a plan for a common Central European set of procedures for dealing with the Gypsy question, with all of the region's major states invited to a conference in Switzerland in 1909, with a view to signing an agreement on an international approach to Gypsies. Plans for this agreement foundered largely on Prussia's refusal to become involved, when they became alerted to the fact that the Swiss were to suggest applying the 1851 Treaty of Gotha to try and bring the German states to agree to simply naturalize Gypsies whose citizenship status could not be ascertained.[94] With the international approach stymied by Prussia's fear that they could not simply expel Gypsies with questionable claims to citizenship, the Swiss dropped the proposal and switched to the Bavarian model to establish their own national Gypsy register in 1909.[95]

In terms of the desire to use the Munich conference as a platform for Bavaria to become the acknowledged German centre for the combating of Gypsies, the conference was only a partial success and by November of 1912 only Baden and Hessen had signed the agreement generated by the conference.[96] Basic definitional work proved difficult, with some delegates insisting that even Harster's broad definition of what constituted a Gypsy would impinge upon the police's ability to assess for themselves whether someone qualified for expulsion or not. Unsurprisingly, the question of who should bear what costs also proved difficult. Much of the contents of Harster's *Denkschrift* simply proved too controversial to be approved by the other states, with the preferred methods of 'combating the Gypsy plague' across borders, for example, the subject of some intense discussions. In particular, Munich's surreptitious attempt to revive the Swiss plan to bestow citizenship on Gypsies of uncertain heritage as a prelude to pressuring them to become sedentary was strenuously attacked by the Prussian representative Nelken who feared that Prussia must inevitably suffer the heaviest load from this measure. Instead of being made citizens, Nelken revived the suggestion that those Gypsies whose citizenship was unclear should be forcibly deported to Germany's

[92] BHStA MInn 66437 Niederschrift über die Besprechung im KB Staatsministerium des Innern am 18 und 19 Dezember 1911, betreffend die Bekämpfung der Zigeunerplage, §2.

[93] See correspondence from 15 March, 18 March 1907 in BHStA MA 92790. See too Correspondence dated 20 July 1910 in MInn 66437.

[94] GStAPK IHA Rep 77 Tit 423 Nr 53 adh2 Bd 5, pp. 324–34. On the Treaty of Gotha, see Dieter Gosewinkel, *Einbürgern und Ausschließen. Die Nationalisierung der Staatsangehörigkeit vom Deutschen Bund bis zur Bundesrepublik Deutschland*, Vandenhoeck & Ruprecht, Göttingen, 2001, pp. 155–8

[95] Thomas Huonker, *Fahrendes Volk—verfolgt und verfemt. Jenische Lebensläufe*, Limmat Verlag, Zürich, 1987, pp. 63–4.

[96] M Inn to St MdKHuÄ, 12 November 1912 in MA 92790.

overseas colonies. Hessen and Württemberg also found this penal colonial option 'noteworthy'.[97]

The idea of sending Gypsies to penal colonies had been discussed in Germany for some time and had gained certain traction, given that it seemed to offer an enduring solution to a perennial social 'problem'. Newspapers advising sending 'the wild to the wilderness' saw an opportunity if not for the betterment of the Gypsies, then at least a chance to 'cleanse the Motherland' of the 'Gypsy plague'.[98] Legal scholars too had expressed some interest in the idea of sending Gypsies to penal colonies. Breslau University's Professor Felix Friedrich Bruck, included the 'at least 100,000 beggars and vagabonds' amongst those who should be deported as part of a progressive system of social betterment for the poor,[99] while Oscar Priester, debated the possibility of deporting '*Malfaiteurs d'habitude*' guilty of being workshy, vagrants, vagabonds, and beggars.[100] Zweibrücken's *Oberlandesgerichtsrat* Casimir Wagner was also forthright on why Gypsies might be deported in *Die Strafinseln* in 1904. Germany, Wagner argued, was beset by 'beggars, vagrants, and other travelling folk—vagabonds in the true sense of the word—a plague,—mealworms'. Complaining that such itinerants numbered around 100,000 or more, Wagner demanded that 'the green wagons of the Gypsy bands' the regular expulsions of which cost a great deal of time, energy, and resources, could be dealt with by transportation to a penal colony. 'It was a wonder,' Wagner remarked, 'that we haven't already unleashed a storm of rage and aversion against these ragged animalistic, pyromaniac and generally dangerous hordes.'[101]

Beyond Bavaria, Prussia had also demonstrated a strict determination to minimize the number of Gypsies that perambulated through its vast territories, as its torpedoing of any naturalization plans made clear.[102] In 1886, for example, Gypsies were targeted in the Prussian House of Deputies as a plague of thieves and beggars, from which the Prussian people required saving. While the Conservative deputy von Rauchhaupt invited the Interior Minister to use exceptional measures to expel Prussia's citizen Gypsies, Puttkamer refused to countenance any extra-judicial measures. Comparing them to the Poles he was in the process of expelling, Puttkamer expressed the view that those Gypsies who were Prussian

[97] 'Niederschrift über die Besprechung im KB Staatsministerium des Innern am 18 und 19 Dezember 1911, betreffend die Bekämpfung der Zigeunerplage', pp. 23–4 in BHStA MA 92790.

[98] Albrecht, *Zigeuner in Altbayern 1871–1914*, pp. 179–80.

[99] Felix Friedrich Bruck, *Fort mit den Zuchthäusern!* Koebner, Breslau, 1894; Felix Friedrich Bruck. *Neu-Deutschland und seine Pioniere. Ein Beitrag zur Lösung der sozialen Frage*, Koebner, Breslau, 1896, p. 21. On this, see Ralf Rother, *Gewalt und Strafe. Dekonstruktionen zum Recht auf Gewalt*, Königshausen und Neumann, Wurzburg, 2007, pp. 60–1.

[100] Oscar Priester, *Die Deportation*, p. 31. The target group was more precisely defined in a footnote as discernible through their 'Umherziehen ohne festen Wohnsitz oder ausserhalb desselben zwecks–arbeits–oder geschäftlos und ohne rechtmäßig erworbene Unterhaltsmittel.'

[101] Casimir Wagner, *Die Strafinseln*, Fritz Lehmann Verlag, Stuttgart, 1904, pp. 19–22.

[102] For a detailed discussion of the attempts to implement Prussia's anti-Gypsy measures in Hannover, see Wolfgang Günther, 'Die preußische Zigeunerpolitik seit 1871 im Widerspruch zwischen Planung und lokaler Durchführung', *Hannoversche Geschichtsblätter* 38, 1984, pp. 127–76.

subjects were to be treated just as all other German citizens, irrespective of how undesirable their presence was to others. So too Ministerial Director Zastrow informed the House that the correct way to deal with Gypsies was most certainly expulsion, preferably with the cooperation of other German state governments, but only if they were not citizens.[103]

In the first decade of the twentieth century anti-Gypsy measures were updated by Prussia. On 26 April 1904, the Prussian House of Deputies unanimously voted for a resolution without debate calling for the federal government to legislate nationally for measures in regard to the 'Gypsy question', with particular reference to the provision of certificates for occupational travel to German Gypsies.[104] On 1 May 1904, Prussia also instructed all of its regional authorities to refuse certificates for occupational travel to Gypsies with children of school age. Again, the offices were reminded that Gypsy was not an ethnic descriptor, but that the ordnances applied to 'all those that travelled around the state in a Gypsy fashion'.[105] A landmark step towards regularizing Prussia's approach to the Gypsy question came with the 1906 publication of the *Directions for the Combating of the Gypsy Menace* by the Prussian Minister for the Interior, Bethmann Hollweg.[106] This publication, in some ways designed as a complementing counterpart to the Bavarian *Zigeuner-Buch*, made it very clear to all of the pertinent Prussian officials which legal measures were to be used in dealing with Gypsies within Prussian territory.[107] It began with the simple statement that 'foreign Gypsies are to be refused entry into the Reich with all legally available means' and then went on to describe precisely how non-German Gypsies should be expelled should they be encountered within Prussian territory. The bulk of the pamphlet, however, was concerned with the dilemma posed by citizenship-holding German Gypsies, who continued to be the subject of newspaper and ministerial reports.[108]

As with Bavaria, the central measures favoured by Prussia were a combination of stringent regulation via certification and identification document requirements, a 'zero tolerance' approach to law infringements of any kind by Gypsies and police surveillance that unabashedly targeted Gypsies, their children, and their animals.[109] One often overlooked provision, however, was the first section dealing with German Gypsies, which simply states that all measures were to be undertaken to ensure that they became sedentary. The reason given was that it

[103] *Verhandlungen der Haus der Abegeordneten*, 1886, Vol I, pp. 388–92.

[104] Breithaupt, *Die Zigeuner und der deutsche Staat*, p. 15.

[105] Preußische Ausführungsanweisung zur Gewerbeordnung, 1 May 1904 in Höhne *Die Vereinbarkeit der deutschen Zigeunergesetze*, pp. 105–6.

[106] *Anweisung zur Bekämpfung des Zigeunerunwesens vom 17 Februar 1906*, Carl Henmans Verlag, Berlin, 1906.

[107] The initial edition was distributed to 960 Prussian officials. See report dated 21 June 1906 in GStAPK Rep 77 Tit 423 Nr 53 adh2 Bd 4, p. 348.

[108] See, for example, the discussion generated by newspaper reports of a large number of Gypsies meeting in the district of Peine in August 1906 before continuing on to the fair in Braunschweig. Frustratingly for officials, none were eligible for expulsion because they were citizens. GStAPK I HA Rep 77 Tit 423 Nr 53 adh2 Bd 5, pp. 2–5.

[109] *Anweisung zur Bekämpfung des Zigeunerunwesens, passim*.

was through their peripatetic lifestyle they became a 'burden on the population'.[110] To further combat the peripatetic tendencies of Gypsies, as well as in order to be seen to be addressing the problem, Prussia also circulated the *Anweisung* to other German states, reminding them to continue to expel foreign Gypsies and to refuse travel papers to domestic ones, because 'often Gypsies with identification papers that are encountered in Prussia have been issued these papers by other states'.[111]

Crucially, however, the Prussian publication housed no new measures beyond the principles consistently stated since at least 1870 of expelling foreign Gypsies and refusing travel permits to German Gypsies. Consistently throughout the late nineteenth and early twentieth centuries, when government officials requested that new 'preventative police measures' be introduced, or when Prussian Deputies railed against the Gypsy 'calamity', and bemoaned 'the anomaly of our time, the scorning of our legal circumstances, that we in our civilised times must endure this nomadism, this highway robbery', no new legal initiatives (much less extraordinary laws) resulted. Instead, an alternative position was adopted by the competent authorities; that the current policy of expelling foreign Gypsies and coercing domestic ones into becoming sedentary was in fact working.[112] In fact, when the Interior Minister enquired about the veracity of Wilhelm Frank's exhaustive list of complaints about Gypsies in the *Reichstag*, the behind-closed doors attitude of Prussian legal advisors remained sceptical. 'Deputy Frank's complaints in the *Reichstag* are exaggerated,' reported one governmental legal advisor, 'I don't consider legal measures of any sort to be required.'[113] While newspapers continued to complain of 'unbearable' numbers of 'the brown folk' constituting a 'Gypsy plague' in the provinces,[114] when pressed by the Interior Minister at the turn of the century, Prussia's local authorities consistently reported low (and declining) numbers of Gypsies in their regions.[115]

To the extent that Gypsies were seen as a problem by the Prussian Interior Ministry, it was seen as a result of the fact that the existing regulations were not being applied by the relevant authorities, rather than a result of inadequate legislation or a lack of *Ausnahmegesetze*.[116] Accordingly, Prussia's approach to the 'Gypsy menace' was to continuously re-publicize the existing and available measures rather than to introduce the kind of stringent exceptional laws that the media and *Reichstag* Deputies such as Frank desired.[117] As the Prussian Justice Minister argued in a letter to the Interior Minister in June 1905, 'the view that

[110] *Anweisung zur Bekämpfung des Zigeunerunwesens*, p. 5.

[111] 17 April 1906, BHStA MA 92790. For attempts to square the Prussian Anweisung with the Bavarian Zigeunerbuch, see reports dated 23 April and 16 July 1906 in MA 92790.

[112] Geheimer Regierungsrat Joel to Glasser in GStAPK I HA Rep77 Tit 423 Nr 53 adh2 Bd 5, pp.361, 387, Schall, Haus der Abgeordneten, 22 February, 1899, responded to by Holtz in GStAPK I HA Rep77 Tit 423 Nr 53 adh2 Bd 2, pp. 144, 232.

[113] GStAPK I HA Rep77 Tit 423 Nr 53 adh2 Bd 5, pp. 361, 387, 367, 383, 430, 444–5.

[114] See, for example, *Reichsbote*, 5 July 1901, *Kölnische Zeitung*, 21 September 1900.

[115] GStAPK I HA Rep77 Tit 423 Nr 53 adh2 Bd 5, p. 383.

[116] GStAPK I HA Rep77 Tit 423 Nr 53 adh2 Bd 5, p. 383.

[117] Höhne, *Die Vereinbarkeit der deutschen Zigeunergesetze*, pp. 115–29.

the successful control of the Gypsy menace is to be pursued not through special legislation but rather through the concerted and energetic usage of the existing legal provisions is one with which I concur'.[118] Or as the Interior Minister, Georg von Rheinbaben acerbically commented to one hot-headed Count in Prussia's *Herrenhaus*, 'a radical means to wipe out the whole plague are not at our disposal'. Rather, foreign Gypsies would continue to be expelled, and domestic Gypsies would be denied permission to work and travel.[119]

Saxony too had taken a number of measures, beginning with the 17 December 1870 measures against 'Gypsies and foreign bear and monkey trainers'. This new law sought to accommodate the 'freedom of movement' provisions of the *Norddeutscher Bund* by permitting this class of persons into Saxony, should they be citizens of the states within the League, however expressly forbidding the entry of the same in the case that they were from other states, in accordance with a series of laws dating back to 23 April 1612, 5 January 1743, and 30 May 1766, which, the Saxon Ministry of the interior insisted, 'remained unaltered'.[120] In July 1872, regional authorities were once again reminded of the need for 'strict action against Gypsies', whilst on 16 July 1886, the division between German and foreign Gypsies was explicitly reiterated in response to the national attempt at interstate coordination (rather than federal control) instigated by the Reich Ministry for the Interior, again advising that foreign Gypsies were not to be allowed entry into Saxony and that if they should be encountered that they were to be expelled at the nearest border, whilst German Gypsies were to be scrutinized according to the validity of their identity papers and the school attendance record of their children. Any criminal activity was to result in them being sent to either a workhouse or prison.

These regulations were renewed on 18 June 1894 and 27 July 1903,[121] whilst on 22 April 1907, Saxony adopted Prussia's *Anweisung zur Bekämpfung des Zigeunerunwesens* as the basis for its own regulatory system.[122] On 5 February 1908 it was declared that stricter surveillance measures were necessary, due to a noticeable growth in the numbers of Gypsies entering into Saxony. The measures outlined were the introduction of fingerprinting of all Gypsies to ensure that their alleged attempts at identity fraud were unsuccessful. By 1908, Dillman's *Zigeuner-Buch* was introduced into Saxony as the standard text for the control of Gypsy bands in that state. Any Gypsy not accounted for by that text was to be photographed and fingerprinted, and their personal details sent to Munich so that later editions of the work would include the identities and criminal records of hitherto unknown Gypsies.[123] As Simon Constantine has made clear, however,

[118] GStAPK I HA Rep77 Tit 423 Nr 53 adh2 Bd 3, p. 357.
[119] GStAPK I HA Rep77 Tit 423 Nr 53 adh2 Bd 2, p. 236.
[120] Ministeriumsverordnung 17 December 1870 in Höhne, *Die Vereinbarkeit der deutschen Zigeunergesetze*, p. 153.
[121] Höhne, *Die Vereinbarkeit der deutschen Zigeunergesetze*, pp. 153–62.
[122] Hehemann, *Die Bekämpfung des Zigeunerunwesens*, p. 261.
[123] Höhne, *Die Vereinbarkeit der deutschen Zigeunergesetze*, pp. 161–3. See too Constantine, 'Particularities of Persecution'.

this surveillance and state control was both assisted and impeded by rural and semi-urban communities, which decided whether or not to assist local authorities in controlling Gypsies in their area on the basis of the economic role they played when they entered these communities.[124]

Württemberg, as Dillman's *Zigeuner-Buch* made clear, had a long history of close cooperation with Bavaria in their efforts to clamp down on Gypsies, and this was reflected in their regulations, which highlighted not only the need to follow a nationally coordinated approach (by allowing the entry of Gypsies from other German states after October 1871, but also as of 24 September 1903, the need to keep Bavarian officials apprised of developments regarding the issue of legitimizing certification to Gypsies. By October 1905, Dillmann's *Zigeuner-Buch* was also standard issue for Württemberg's police. That said, Württemberg introduced its own piecemeal system of regulation prior to this, with reforms in 1879, 1885, 1897, 1902, and 1905, with the regulation that German Gypsies be banned from 'travelling in hordes' (that is as more than one family group) in January 1905 a particularly noteworthy infringement on their freedom of movement and association.[125] In terms of regional peculiarities, Thomas Fricke has noted the curious inversion of national trends in the 1887 Württemberg Chamber of Deputies debate on the Gypsies, where, in contradistinction to the *Reichstag*, it was the left liberal *Volkspartei* deputies Franz Hartmann and Robert Ebner who were most vocal in their criticism of Gypsies. Even more strangely, Württemberg's Gypsies were defended by the arch-conservative Hans von Ow. Accused by Ebner of 'singing a song of praise' for the Gypsies, Ow professed in amazed tones that he found it 'very strange that it is presently a speaker from the Left who is working towards treating a category of fellow citizens and non-citizens worse than has hitherto been the case'.[126] Württemberg's strict regulation and surveillance of Gypsies continued unabated after World War One. Similarly, Baden and Hessen both followed the lead of the other German states by ensuring their laws matched those of Bavaria and Prussia in 1885, and 1886, with smaller states also adding additional regulations in 1906 and 1912, in response to Bethmann Hollweg's 1906 *Anweisung zur Bekämpfung des Zigeunerunwesens* and the new surveillance possibilities afforded by Dillmann's *Zigeuner-Buch*.[127]

Gypsies were consistently represented as an unwanted element of *Kaiserreich* society. Yet they were never the object of a suddenly imposed set of exceptional laws after a particular crisis, as might be said of Social Democrats under the *Sozialistengesetz* or Jesuits at the beginning of the *Kulturkampf*. Instead, German Gypsies entered the period after 1871, virtually for the first time, on the same legal basis as other German citizens. Emerging from a centuries-long legal tradition

[124] Constantine, 'Particularities of Persecution', pp. 49–52.

[125] For specific details of anti-Gypsy measures in Wurttemberg, see Thomas Fricke, *Zwischen Erziehung und Ausgrenzung: zur württembergischen Geschichte der Sinti und Roma im 19. Jahrhundert*, Peter Lang, Frankfurt, 1991.

[126] Fricke, *Zwischen Erziehung und Ausgrenzung*, pp. 123–5.

[127] Höhne, *Die Vereinbarkeit der deutschen Zigeunergesetze*, pp. 165–206, Hehemann, *Die Bekämpfung des Zigeunerunwesens*, p. 261.

of exclusionary measures, Gypsies moved towards an acknowledged status in law within a *Rechtsstaat* which recognized no distinction between Gypsy and non-Gypsy Germans, but instead emphasized an absolute distinction between the foreigner without civic rights and the citizen invested with them.

Yet this constitutionally and legally mandated equality before the law masked a suite of regulations which Martin Luchterhandt has neatly summarized as 'surveillance, identification, registration, and punishment'.[128] As a result of conscious efforts to synchronize the regulations imposed by the different German states, these measures almost uniformly amounted to the automatic expulsion of those deemed (often by dint of having insufficient identifying papers) to be non-German Gypsies. To deal with citizen Gypsies, the states moved towards the imposition of regulations which would criminalize Gypsy behaviour. These regulations imposed heavy restrictions on itinerant workers, strict conditions of registration upon arrival in a new state or even city, the mandatory registration and continuous inspection of animals used by those in itinerant professions, the mandatory registration of all wagons, a ban on Gypsies carrying weapons, the compulsory recording of Gypsy fingerprints and the use of photographic records to combat identity fraud. Gypsy children were also removed from their families under compulsory schooling legislation. In addition to these wide-ranging forms of legal control, particularly in Bavaria and Prussia, by far the most favoured tool for the management of Gypsies in Germany was the informal and continuous regulatory harassment by the police which sought to encourage them to move on into other jurisdictions where the process could begin again—a tendency bemoaned by Alfred Dillman in his *Zigeuner-Buch* as well as in Harster's 1911 *Denkschrift*.[129]

Despite the states' insistence on strict compliance by Gypsies to a stiff regulatory regime which deliberately created insurmountable obstacles to Germany's non-sedentary population, the legislators of the various German states were uniformly anxious to ensure that no obviously exceptional legal framework was created which was expressly dedicated to Gypsy citizens and which was invalid for other German citizens. Rather, as a subsection of the community which was defined by a specific set of behaviours, the set of 'anti-social' behaviours deemed characteristic of Gypsies could be made illegal without fear of this regulation affecting the majority, sedentary German population. Negative externalities for the 'legitimate' itinerant worker population notwithstanding, 'Gypsies', as an imagined social cohort, were identified, controlled, and expelled without a need for the German *Rechtsstaat* to deviate from its commitment to the rule of law. Although complaints regarding the 'Gypsy menace' and the 'Gypsy plague' spilled into political discourse in response to media and grassroots pressure, the political assemblies of the German states and their federal counterparts passed motions of sympathy but proved remarkably immune to even calls from within

[128] Luchterhandt, *Der Weg nach Birkenau*, pp. 26–7.

[129] Dillmann, *Zigeuner-Buch*, p. 8. See also Luchterhandt, *Der Weg nach Birkenau*, pp. 20–1. For a detailed discussion of some of these measures in the post-war period, see, Höhne, *Die Vereinbarkeit der deutschen Zigeunergesetze*, pp. 42–96.

to radicalize anti-Gypsy laws. As a result, the expulsion of foreign Gypsies and the control of domestic ones remained predominantly a police matter, handled by local and state authorities armed with the latest surveillance and intelligence techniques and empowered by a battery of state regulations.

Individually, Germany's anti-Gypsy measures were enacted through the mechanisms of sovereign power available to grassroots authorities, so as to protect non-Gypsy Germans from the putative crimes of Gypsies. Cumulatively, however, the desired effect was to combat and eventually eradicate a particular way of living, that is, the German variant of nomadism. These regulations were intended as a biopolitical intervention which would alleviate the need for Germany to accommodate those who had maintained a peripatetic way of life. This is important in terms of assessing the need for the German *Rechtsstaat* to apply extra-constitutional *Ausnahmegesetze* in order to enact biopolitical change. According to Carl Schmitt, 'if a state is democratic, every exceptional suspension of democratic principles and every use of executive power independent from the wishes of the majority of the ruled can be deemed dictatorial. If the liberal principle of inalienable human rights and rights to freedom is the norm, then every infraction of these rights appears dictatorial, even if they are based on the will of the majority.'[130] The majority of deputies in the *Reichstag* and at the state level seemed acutely aware of this and proved themselves to be if not adverse then at least incapable of proclaiming exceptional laws in order to deal with German Gypsies, irrespective of the abundantly clear hostility they harboured toward them. Unlike Agamben's *homo sacer*, citizen Gypsies were never juridically, much less physically, cast out of the *Kaiserreich*, but rather were coerced into conforming to the dominant culture of the sedentary state via regulatory mechanisms meant to disrupt and discipline their lives. The rule of law was never suspended to deal with German or indeed foreign Gypsies, but rather was applied with exceptional vigour. In strict accordance with the constitutional rights of German citizens, non-citizen Gypsies were expelled from Germany. Similarly, German Gypsies were subject to the same legal and regulatory framework as other *Staatsbürger*. The consciously exploited difference, however, was that the strict application of this regulatory regime made the Gypsies' itinerant way of life all but impossible.

[130] Carl Schmitt, *Die Diktatur. Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf*, Munich, Verlag von Duncke & Humblot, 1928, p. vii.

PART III

EXTRA-CONSTITUTIONAL EXPULSIONS

8

French Revanchism and the Boulangist Threat in Alsace-Lorraine

As he and his guests dined at a party on 14 June 1873, Bismarck is said to have turned to the theme of Germany's relationship with France. In particular, he discussed the reasons for the difficult relationship between the Germans and the French in Alsace-Lorraine and the best way to deal with the demographic complexity of the region in the future. The French, like the Poles and all other Latin and Slavic peoples, Bismarck opined, represented 'the feminine element', in contradistinction to the inherently masculine Germans. This, he reasoned, was the reason why the French were inclined towards the creation of large states, whereas Germans strove for the proud independence of their cities and towns. In light of these foundational cultural differences, Bismarck drew the conclusion that the leniency of Germany's assimilation process in Alsace and Lorraine had been a mistake:

> In Alsace and Lorraine, we have erred in that we did not entirely remove the Francophile population. No accommodation can be reached with them. If in any future war with France we again take provinces which were once German, such as Burgundy, then we will have to follow a different principle. We will have to remove the entire French population, push them out from amongst us in a sense and colonise the land with immigrants from Germany, drawn from Mecklenburg and Westphalia and, like in America, give each of them a number of acres. That would be the best bulwark against France, and only then will it be possible to make Alsace and Lorraine completely German again bit by bit; with this German wall.[1]

In this wistful speculation on the benefits that might have accrued to Germany had the French population been removed entirely from Alsace and Lorraine, Bismarck's theoretical endorsement of mass expulsions rested on the premise that Germany's policy towards the French-speaking population had hitherto been restrained and had not resulted in forced population transfers. To be sure, there was considerable cross-border movement immediately after the Franco-Prussian War, when 128,000 people (or 7.5 per cent of the population of Alsace-Lorraine) left the region, primarily because they had elected to maintain their French citizenship and keep France as their place of residence after the shift in the

[1] Hermann Michel (ed.), *Heinrich Eduard Brockhaus, Stunden mit Bismarck 1871–1878,* FA Brockhaus, Leipzig, 1929, pp. 80–1.

Franco-German frontier after the war. Others, however, elected to stay in the territory newly incorporated into the *Reich* as French optants, and legal provision was made for their peculiar citizenship status.[2] Yet, despite the volume of cross-border movement, those leaving had not been forcibly expelled, but rather had decided to leave what had been France and was now Germany in the wake of the Franco-Prussian War.[3]

This is not to say, however, that plans for expulsions *en masse* had not been considered by the German government. In the *Reichstag* debate over the governance of Alsace-Lorraine in May of 1873, the question of expulsions was raised repeatedly in response to Ludwig von Windthorst's accusations that a German dictatorship was being established there, and that the Law for the Freedom of Movement was knowingly and illegally being disregarded when it came to those hitherto French citizens newly incorporated into the German Empire.[4] In the course of this debate, Windthorst accused the German authorities of having unlawfully expelled two pro-French individuals, Morin and Heimburger, as well as a third—Rapp—who was a priest and close associate of the bishop of Strasbourg. For Windthorst, the summary nature of the expulsions was central to their illegality:

> Without a court, without questioning, without a defence, without a trial to expel him through a mere administrative measure; that is indeed something that I cannot comprehend as being in accordance with our renowned cultural standards.[5]

These dictatorial expulsion measures, he continued, were indicative of a 'continuous state of siege' (*Belagerungszustand*) in the region, which elsewhere in Germany would be illegal and which theoretically could cloak a range of radical measures available to local authorities, ranging from corporal all the way through to capital punishment. Just as these violent measures were illegal, he argued, so too the expulsion of pro-French agitators should be considered illegal.[6] This view was echoed by the *Volkspartei* deputy Leopold Sonnemann, who

[2] For a contemporary discussion of optants, see Franz von Holtzendorff (ed.), *Rechtslexikon* (3rd edn) Vol II, Duncker & Humblot, Leipzig, 1881, pp. 954–6. On the legal position of optants in international law, see Felix Stoerk, *Option und Plebiscit bei Eroberungen und Gebietscessionen*, Duncker & Humblot, Leipzig, 1879, pp. 136–76; Ernst Richard Lepsius, *Nationalitätswechsel und Optionsrecht der Elsaß-Lothringer nach den deutsch-französischen Friedensverträgen des Jahres 1871*, Buchdruckerei des Waisenhauses, Halle, 1912; Alfons Gérardot, *Die Optionsfrage in Elsass-Lothringen: Eine Völkerrechtliche Studie*, Heitz & Mündel, Strassburg, 1913; Sophie Charlotte Preibusch, *Verfassungsentwicklungen im Reichsland Elsaß-Lothringen 1871–1918. Integration durch Verfassungsrecht?*, Berliner Wissenschaftsverlag, Berlin, 2006, pp. 96–110; Elizabeth Vlossak, *Marianne or Germania? Nationalizing Women in Alsace, 1870–1946*, Oxford University Press, Oxford, 2010, p. 7. Vlossak views the Optant Clause as a conscious German attempt at demographic manipulation, although it is more likely that this was an effect rather than a reason for it.

[3] For a more general discussion of these trends, see Heinz Kloß, 'Die Auswanderung aus dem Elsaß und aus dem deutschsprachigen Lothringen nach Frankreich', *Elsaß-Lothringisches Jahrbuch* 22, 1952, pp. 250–97; Maxime Veran, ',De la Condition des Étrangers en Alsace-Lorraine', *Annales de l'Ecole libre des Sciences Politiques*, 1893, pp. 118–31, 281–98; François Roth, *La Lorraine Annexée, Étude sur la Présidence de Lorraine dans l'Empire allemand (1870–1918)*. PhD Dissertation Université de Nancy II, 1976, pp. 93–124; Dieter Gosewinkel, *Einbürgern und Ausschließen*, p. 198.

[4] Windthorst, *Verhandlungen des deutschen Reichstags*, 17 May 1873, pp. 689–92.

[5] Windthorst, *Verhandlungen des deutschen Reichstags*, 16 May, 1873, p. 679.

[6] Windthorst, *Verhandlungen des Reichstages*, 33. Sitzung, 16 May 1873, pp. 679–80.

argued that the harshness of the dictatorship and Germanization measures had compelled close to 379,000 French citizens of the *Reichsland* now living in third countries, hitherto enjoying a right of return, to declare themselves as optants for France, thereby ending their capacity to return to their Alsatian homes without the threat of expulsion by German authorities. 'Germans can move freely in France,' he argued, 'so why cannot French citizens move freely in Germany?'[7]

Windthorst and Sonnemann's characterization of the peculiar legal situation in the provinces was not entirely incorrect. Unlike other regions within the German Empire, Alsace-Lorraine was a juridical space external to the federated states explicitly named in Article One and Article Two of the German constitution which, as numerous legal scholars noted at the time, made perfectly clear to which territories the imperial constitution applied:

> Article 1. The federal territory consists of the states of Prussia with Lauenburg, Bavaria, Saxony, Wurttemburg, Baden, Hessen, Mecklenburg-Schwerin, Saxon-Weimar, Mecklenburg-Strelitz, Oldenbourg, Braunschweig, Saxon-Meinigen, Saxon-Altenburg, Saxon-Coburg-Gotha, Anhalt, Schwarzburg-Rudolstadt, Schwarzburg-Sonderhausen, Waldeck, Reuss Elder Line, Reuß Younger Line, Schaumburg-Lippe, Lippe, Lubeck, Bremen and Hamburg…
>
> Article 2. Within this federal territory the Empire exercises the right to legislate in accordance with the provisions of this constitution, with the effect that imperial laws precede state laws[8]

Unlike the other regions named in Article 1, Alsace-Lorraine was not a state within an imperial federation of states but rather was a territory won from France and held by all of the German states in common under the custodianship of the Kaiser—hence the use of the term '*Reichsland*' to describe it. Whereas the citizenship of other German citizens flowed from their status as subjects of one of the states mentioned in Article One of the constitution, citizens of Alsace-Lorraine were technically citizens of the Reich, not of an individual German state.[9]

Also peculiar to Alsace-Lorraine was that the chancellor and the *Reichstag* had limited capacity under law to directly intervene in the governance of the provinces. As §3 of the *Vereinigungsgesetz* of 9 June 1871 baldly stated, 'state power in Alsace-Lorraine is exercised by the Kaiser.' Given that Alsace-Lorraine was annexed to Germany and not Prussia, this power was not exercised in his capacity as King of Prussia. In principle, the Kaiser's rule there was unlike the constitutionally mediated, territorially derived power that he exercised over the rest of Germany, but flowed instead from his symbolic personification of the power of the empire.[10] This concentration of royal power was analogous only to the power granted to the Kaiser as the embodiment of the Reich over the

[7] Sonnemann, *Verhandlungen des Reichstages*, 33. Sitzung, 16 May 1873, pp. 684–5.
[8] *Verfassung des Deutschen Reichs*, pp. 64–5.
[9] Paul Laband, *Das Staatrecht des deutschen Reiches*, Bd I, Tübingen, 1876, p. 597.
[10] Laband, *Das Staatrecht des deutschen Reiches*, pp. 582–5.

colonies by the 1886 Protectorate Act,[11] in an arrangement sometimes referred to as the 'civil dictatorship of the Kaiser'.[12]

As the German jurist most commonly associated with legal theories of dictatorship and sovereign exceptionalism, Carl Schmitt might seem to be the natural starting point for discussing spaces subject to heightened monarchical authority such as Alsace-Lorraine. Viewing the *Reichsland* through the lens of Schmitt's decisionist emphasis on the metajuridical sovereign in instances of legal exception in *Politische Theologie* might lead to the erroneous assumption that Alsace-Lorraine was precisely the kind of exceptional legal space that revealed the Kaiser's broader meta-constitutional sovereignty.[13] The difficulty with such a reading, however, is that unlike in Schmitt's model, the Kaiser did not claim and win this prerogative power. Rather, it was offered by the *Reichstag* in the *Vereinigungsgesetz* of 9 June 1871. As §3 of the *Vereinigungsgesetz* also made clear, the *Bundesrat* and the *Reichstag* also enjoyed an annual right of review over affairs in the *Reichsland* as well, while §4 reintroduced the requirement that the chancellor co-sign (and take responsibility for) decisions made by the Kaiser which affected Alsace-Lorraine.[14] The Kaiser's 'dictatorship', and that of his governor in the provinces was in fact an artefact of the rule of law. To be sure, the distribution and balance of powers brought about by this law was anomalous when compared with the Reich as a whole. Yet, as Lauren Benton has shown, an anomalous legal situation is not necessarily the same as an 'exceptional' one in the Schmittian sense. Here, the rule of law still applied, even in the declaration of its own parenthetical status.[15]

Although the Kaiser ruled Alsace-Lorraine solely by dint of his role as the German head of state, and administered the new territories on behalf of the other political institutions of the empire, they were legally able to review the management of the *Reichsland*, if not directly interfere with its day-to-day administration. This was left to the Kaiser's nominee, the *Oberpräsident* who was empowered by the famous §10 of the Organizational Law of 30 December 1871 to maintain order in the provinces by all means necessary.[16] This was done in consultation with the local, consultative

[11] For *Kaiserreich* comparisons with Alsace-Lorraine, see Hermann Schreiber, 'Die rechtliche Stellung der Bewohner der deutschen Schutzgebiete', *Zeitschrift für Kolonialpolitik, Kolonialrecht und Kolonialwirtschaft* 6, 1904, p. 761; Herbert Hauschild, *Die Staatsangehörigkeit in den Kolonien*, JCB Mohr, Tübingen, 1906, p. 27.

[12] Preibusch, *Verfassungsentwicklungen im Reichsland*, p. 70.

[13] Carl Schmitt, *Politische Theologie*, pp. 9–15; Renato Cristi, 'Schmitt on Constituent Power and the Monarchical Principle', *Constellations* 18(3), 2011, pp. 353–5.

[14] 'Gesetz betreffend die Vereinigung von Elsaß und Lothringen mit dem Deutsche Reiche', vom 9 Juni 1871, *Deutsches Reichsgesetzblatt* 1871, pp. 212–13; Laband, *Das Staatrecht des deutschen Reiches*, pp. 584–5.

[15] Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900*, Cambridge University Press, Cambridge, 2010, pp. 279–99; Lauren Benton, 'Empires of Exception: History, Law, and the problem of Imperial Sovereignty', *Quaderni di Relazioni Internazionali*, 2007, pp. 54–67.

[16] Gesetz, betreffend die Einrichtung der Verwaltung in Elsaß-Lothringen vom 30. Dezember 1871 (GBl.) 1872, p. 49. §10 stated 'in the case of a danger to public security, the governor is empowered to use immediately all measures which are deemed necessary to avert the danger'. Carl Schulze, *Die staatsrechtliche Stellung des Statthalters von Elsaß-Lothringen*, CG Rossberg, Frankenberg, 1904, pp. 80–3, §10 remained in force until the 1902 ‚Gesetz, betreffend die Aufhebung der außerordentlichen Gewalten des Statthalters in Elsaß-Lothringen', *Reichsgesetzblatt* 31, 1922, p. 231.

body, the *Landesausschuß*, created in October 1874 and given the power to initiate law in 1879.[17] After 1879, the basic administration of the *Reichsland* fell to the governor (*Statthalter*), to whom the Kaiser's power was delegated.[18] The governor, who inherited the enhanced §10 powers of the now abolished office of *Oberpräsident*, was directly answerable to the Kaiser rather than to the chancellor or the *Reichstag*. This meant that, on the one hand, the governor was reliant upon the confidence of the Kaiser,[19] but on the other hand that he was liberated from the formal interference of the chancellor, particularly after the passing of the July 1879 Act dissolving the Chancellor's Office for Alsace-Lorraine, which effectively confirmed the status of the governor as an *ersatz* chancellor within the province.[20] Perhaps the best illustration of the separation of Alsace-Lorraine from the sphere of the chancellor's legal competency were the events of March 1887, when the Kaiser informed Governor Chlodwig zu Hohenlohe that Bismarck had wished to break up the provinces and dissolve them into the other German states, thereby abolishing the position of governor. The Kaiser had indignantly *(sichtlich erregt*) refused Bismarck's plan, placing his trust in Hohenlohe's governorship instead, leaving Bismarck legally unable to intervene.[21]

To most observers, the status of law and the delineation of jurisdictions in Alsace-Lorraine was impenetrably complex, as Carl August Schneegan of the Alsace-Lorraine Protest Party complained in the *Reichstag* in 1877, when he remarked that the inhabitants of the *Reichsland*, 'suffered from a governing evil, because the various jurisdictions don't correspond, because there are too many authorities, because we don't know who is chef and who is waiter in this house. We suffer from a juridical evil, because we have so many laws, that we don't know where the law stands.'[22] What was clear, however, was that the territory was subject to the potential circumscription of liberties guaranteed to other Germans under the constitution, particularly with reference to the laws related to freedom of assembly, freedom of association, and freedom of movement—rights that could only be inhibited in other imperial territories through the declaration of a state of war (*Kriegszustand*) or a state of siege (*Belagerungszustand*). Both §10 of the Organizational Law of 1871 and subsequently §2 of the Governor Law of 1879

[17] Preibusch, *Verfassungsentwicklungen im Reichsland*, p. 121.

[18] 'Gesetz betreffend die Verfassung und die Verwaltung Elsaß-Lothringens' (4 Juni 1879) *Deutsches Reichsgesetzblatt* 22, 1879, p. 165; Ernst Bruck, *Das Verfassungs- und Verwaltungsrecht von Elsaß-Lothringen*, Karl J Trübner, Straßburg, 1908, pp. 77–9; Carl Schulze, *Die staatsrechtliche Stellung*, p. 7.

[19] Hans Ulrich Wehler, 'Elsaß-Lothringen von 1870 bis 1918. Das Reichsland als politisch-staatrechtliches Problem des zweiten deutschen Kaiserreichs', *Zeitschrift für die Geschichte des Oberrheins*, 109, 1961, pp. 153–4.

[20] 'Gesetz betreffend die Verfassung und die Verwaltung Elsaß-Lothringens' (4 Juni 1879), p. 165; Preibusch, *Verfassungsentwicklungen im Reichsland*, pp. 59–60, 70, 216.

[21] Hohenlohe, journal entry 19 March 1887 in Chlodwog zu Hohenlohe-Schillingsfürst, *Denkwürdigkeiten des Fürsten Chlodwig zu Hohenlohe-Schillingsfürst*, Deutsche Verlags-Anstalt, Stuttgart, 1907, pp. 412–14. Further details of Bismarck's plan and Hohenlohe's moves to stop him are contained in his letter to Bismarck on 20 March 1887 and his journal entry from 29 March 1887, Hohenlohe-Schillingsfürst, *Denkwürdigkeiten des Fürsten Chlodwig zu Hohenlohe-Schillingsfürst*, pp. 414–19.

[22] Carl August Schneegan as cited by Preibusch, *Verfassungsentwicklungen im Reichsland*, p. 179.

offered the governor of the territories the right to expel residents and ban publications and public assemblies, powers which, as Ludwig Windthorst argued, were only available elsewhere in Germany after the declaration of a state of siege (*Belagerungszustand*).[23] The suite of measures offered included the expulsion of those convicted before a court and of non-citizens. While these powers were of heightened importance in the charged atmosphere of a contested frontier lying outside the zone of constitutional rule, they were not entirely new to the provinces, as they had their origins in French law, namely from §9 of the French State of Siege law of 9 August 1849.[24]

Although the term was not actually used in the debate, the pejorative name for §10—the *Diktaturparagraph*—stemmed from a speech given by the Centre Party's Ludwig Windthorst on 16 May 1873, when, in discussing the use of §10 to expel French nationals, he used the words *Diktatur* and *diktieren* twelve times.[25] The term stuck in both public and official discourse.[26] Central to the contemporaneous perception in the *Reichstag* of the December 1871 law as exceptional were the expulsions enabled by §10.[27] In fact, Windthorst viewed the *Diktaturparagraph* as a purely cynical fig-leaf legal provision used to facilitate the expulsion of the French residents of Alsace-Lorraine. The National-Liberal Maximilian von Puttkamer also opined that the extraordinary conditions of §10 allowed for the expulsion of not only foreign nationals, but also of German citizens, who could be removed from the provinces to other German states.[28] For his part, Bismarck did not deny this, but simply reminded the *Reichstag* that it had no role of oversight in this regard, referring to the peculiar juridical relations of the *Reichsland*, and explaining that 'in Alsace there is no constitutional government. His Majesty the Kaiser is specifically designated the bearer of state power and in concert with the *Bundesrath* he manages legal affairs'.[29] As the following shows, however, rather than the Kaiser, it was the governor and authorities in the provinces themselves that dictated the rate and frequency of expulsions. As in the case of expulsions enacted by the German states, those carried out in the *Reichsland* were the product of local authorities reacting to local conditions, often in the face of opposition from Berlin.

[23] Alfons Rudolf, *Der Statthalter in Elsass-Lothringen*, Louis Hofer, Göttingen, 1905, pp. 101–10; Ernst Bruck, *Das Verfassungs- und Verwaltungsrecht*, pp. 18–19; Heinrich Pohl, 'Der Diktaturparagraph in Elsaß-Lothringen. Eine Studie zur deutschen Verfassungsgeschichte', in Heinrich Stoll (ed.), *Festgabe für Philipp Heck, Max Rumelin, Arthur Benno Schmidt*, Verlag von JCB Mohr, Tübingen, 1931, pp. 277–303; Hans-Ulrich Wehler, 'Elsass-Lothringen von 1870 bis 1918', pp. 158–60.

[24] Carl Schulze, *Die staatsrechtliche Stellung des Statthalters*, pp. 80–1; Preibusch, *Verfassungsentwicklungen im Reichsland Elsaß-Lothringen*, pp. 132–43.

[25] Windthorst, *Verhandlungen des Reichstages*, 33. Sitzung, 16 May (Vol 27) 1873, pp. 678–80.

[26] Pohl, 'Der Diktaturparagraph', p. 283.

[27] For later discussions of the legality of expulsions under §10 after World War One, see Ernst Hochschild, 'Der Diktaturparagraph in Elsaß-Lothringen', *Elsaß-Lothringisches Jahrbuch* (4), 1925, pp. 149–66; Joseph Rossé, Albert Bleicher, Fernand Deiber, and Jean Keppi (eds), *Das Elsass von 1870–1932 I. Band, Politische Geschichte*, Verlag Alsatia, Colmar, 1938, pp. 83–104.

[28] Puttkamer, *Verhandlungen des Reichstages*, 34. Sitzung, 17 May 1873, p. 697.

[29] Bismarck, *Verhandlungen des Reichstages*, 34. Sitzung, 17 May 1873, p. 692.

By the late 1880s, the modest number of expulsions protested by Windthorst had risen considerably. During the governorship of Field Marshall Edwin von Manteuffel, pro-French agitators were periodically expelled from Alsace-Lorraine, however German nationalists in the region consistently complained that the number of expulsions was too low and that too many expulsion orders issued by local authorities had been overturned. The target of their complaints was Governor Manteuffel, whose leniency was also oft bemoaned in the press and in government reports. Despite his military background, the first *Statthalter* of Alsace-Lorraine was unashamedly conciliatory in his approach to the French-speaking population of Alsace Lorraine, seeing it as his role 'to heal wounds' and 'to combat the perception that Alsace Lorraine must be treated as a conquered state'.[30] This approach allowed a relative political calm to be maintained in the *Reichsland*, but, as he acknowledged, this was at the cost of his own reputation amongst hard-line advocates of a rapid Germanization of the provinces.[31] As Manteuffel saw it, however, Germanizing those who had grown up as French patriots would be impossible and the welfare of those who lived in the region demanded that he focus on essentials such as security and prosperity.[32]

This conciliatory approach found its defenders, such as Alberta von Puttkamer,[33] however German nationalist commentators were universally scathing of what they saw as a craven surrendering of German interests in the face of French revanchism. This was made evident after Manteuffel's death when the later Chancellor, Chlodwig zu Hohenlohe-Schillingsfürst, was announced as his replacement and the nationalist German press hailed it as an opportunity to undo the damage of the Manteuffel era. The *Kölnische Zeitung* of 24 July 1885 bluntly opined that 'the politeness and kindness of Manteuffel is now renowned to have been a fruitless waste'. For its part, the *Metzer Zeitung* argued that 'after a government that for almost six years had achieved nothing but blunders and failures', Hohenlohe represented new hope for Germans in the region. The *Schwäbische Merkur* of 8 September 1885 also looked to Hohenlohe to hold a far firmer line towards French optants in the *Reichsland*, as did the *Allgemeine Zeitung* on 14 August.[34]

Similarly tarred with the brush of Manteuffel's presumed leniency was his state secretary, Karl von Hofmann. Upon Hohenlohe's accession to the governorship, his Berlin correspondent Holstein wrote to him 'I wish you all the best in your new position. In particular I wish you a different state secretary to Hofmann.'[35]

[30] Edwin Manteuffel, cited in Tony Kellen, *Das Deutschtum in Elsaß-Lothringen 1870–1895. Rückblicke und Betrachtungen von einem Deutschnationalen*, FW Grunow, Leipzig, 1895, p. 152. For a less than sympathetic general discussion of Manteuffel's governorship, see Preibusch, *Verfassungsentwicklungen im Reichsland*, pp. 234–70.

[31] Alberta von Puttkamer, *Die Aera Manteuffel. Federzeichnungen aus Elsaß-Lothringen*, Deutsche Verlags-Anstalt, Stuttgart, 1904, p. 151.

[32] Kellen, *Das Deutschtum in Elsaß-Lothringen*, pp. 145–7.

[33] von Puttkamer, *Die Aera Manteuffel.* See for example p. 131.

[34] *BA Koblenz, Nachlaß Hohenlowe, Chlodwig*, N1007/1443 'Zeitungsartikel anlässlich der Ernennung Reichsstatthalter', pp. 1, 19, 33, 79.

[35] Holstein to Hohenlohe, 7 July 1885 in Helmuth Rogge, *Holstein und Hohenlohe. Neue Beiträge zu Friedrich von Holsteins Tätigkeit als Mitarbeiter Bismarcks und als Ratgeber Hohenlohes; nach Briefen und Aufzeichnungen Aus Dem Nachlass des Fürsten Chlodwig zu Hohenlohe-Schillngsfürst*,

Hofmann's name was so sullied that he was forced to defend himself to Hohenlohe against claims that he was personally responsible for rescinding the majority of expulsion orders issued by local officials to pro-French activists. In an official report received by Hohenlohe, an unnamed official argued that the 'cancerous' regime of Manteuffel and Hofmann had demoralized other German authorities in the region because they had 'overturned three-quarters of all of the expulsions ordered by local authorities (*Kreis-Directoren*)'. Hofmann furiously replied in August 1886 that of the 227 ordered expulsions between September 1884 and August 1886 only 39 had been overturned. Furthermore, he argued, such matters were not within his purview and instead rested with the *Bezirkspräsidenten* and the governor; squarely shifting the blame back to the now dead Manteuffel. This line of argument, however, would ultimately not help him save his position in the emerging political atmosphere of crisis which would dominate once the war scare of 1887 arrived. With war seemingly looming, the sense of an acutely worsening security situation vis-à-vis France meant that those associated with Manteuffel's earlier policy of reconciliation with the Alsatian French found their positions untenable.[36]

After Manteuffel's death and subsequent replacement with the new governor, Hohenlohe, the number of expulsions of French nationals from Alsace-Lorraine rose markedly. Nevertheless, despite this appreciable rise, Hohenlohe came under intense pressure from Berlin to chart an even more radical course of action against pro-French resident aliens and optants. In particular, it was made clear to Hohenlohe that Bismarck wished to see the contemporaneous expulsions of Poles now underway replicated in Alsace-Lorraine. From a number of different sources, Hohenlohe came to understood that the chancellor wanted to see the expulsion of those pre-1871 citizens of France from Alsace-–Lorraine who had officially opted to maintain their French citizenship, particularly those who had persisted in involving themselves in pro-French political agitation.

In 1886, Berlin also pushed for all reserve officers of the French Army to be expelled, in the process renewing the accusation that Hofmann had rescinded earlier expulsion orders made by local authorities,[37] charges which Hofmann vigorously disputed.[38] Warning Hohenlohe of the prevailing mood in Berlin, Friedrich von Holstein advised Hohenlohe in November 1886 that 'you will not win the day with mere constitutional indulgences'. Hohenlohe, however, was cautious, both in terms of his actions in the *Reichsland* and in his discussions with Berlin, replying that he was 'not entitled to play the part of the constitutional monarch, but rather that of a responsible minister' who 'must avoid *actes de rigueur*, without knowledge of the people or relationships involved'.[39] Arguing that any expulsions

Deutsche Verlags-Anstalt, Stuttgart, 1957, p. 241. See also Holstein to Hohenlohe, 11 August 1886, in Rogge, *Holstein und Hohenlohe* and Wilhelm Sendler, *Fürst Chlodwig zu Hohenlohe-Schillingsfürst als Statthalter im Reichslander Elsaß-Lothringen 1885–1894*, Elsaß-Lothringen-Institut, Frankfurt, 1929, pp. 61–5.

[36] *BA Koblenz*, N1007/1507, pp. 11–38.

[37] Holstein to Hohenlohe, 11 August 1886 in Rogge, *Holstein und Hohenlohe*, pp. 251–2.

[38] *BA Koblenz* N1007 Nr 1507, pp. 11–15.

[39] Holstein to Hohenlohe, 17 November 1886, Hohenlohe to Holstein, 21 November 1886 in Rogge, *Holstein und Hohenlohe*, pp. 261–3.

would be counterproductive and could lead to retaliatory expulsions of German reserve officers engaged in business in France, Hohenlohe deflected the request for a round of expulsions while shielding Hofmann from the vexatious charge that he had reversed the expulsion orders made by his subordinates during the Manteuffel era.[40]

This pressure for a wave of punitive *Massenausweisungen* was intensified not merely by the perception that German policy in Alsace-Lorraine had been allowed to drift under Manteuffel's lenient stewardship, nor by events in the Prussian east. It was also heightened in 1887 by a hardening attitudinal shift that accompanied a sudden war scare. The perception of an imminent French threat had arisen in response to the political phenomenon of *Boulangisme* sweeping France, which had brought about a concomitant spike in the stridency and level of agitation by the membership of the pro-French Patriot League (*Patriotenliga*) in Alsace-Lorraine. With the German borderlands now seen as jeopardized by a revanchist and increasingly bellicose France, pre-emptive expulsion measures, not unlike those taken by the French during the Franco-Prussian War, [41] were seen by Berlin as necessary to the security of the *Reichsland*. The growing foreign policy crisis was compounded by what was seen as a deeply disappointing *Reichstag* election result for German nationalists in the region in 1887. By themselves, these occurrences may not have provoked an acute response, but their collective impact saw pressure mount on Hohenlohe and his authorities to undertake radical action, in particular expulsions, to restore German control over provinces that seemingly continued to resist being absorbed into the empire.

Boulangism had appeared in France as a populist eruption just as Manteuffel was exiting the political stage in Alsace-Lorraine. As an unapologetically revanchist movement, it seriously threatened the already uneasy peace between Germany and France. The movement was led by a once fringe nationalist, the former French Minister of War Georges Boulanger. By virtue of a strange mix of chauvinist Jacobin populism and elements of royalist support, Boulanger emerged as the leader of a strong, grass roots political movement which seriously threatened to overwhelm the political establishment of the Third Republic in the late 1880s.[42] In Germany, it was assumed in conservative circles that Boulanger's strategy was to establish a dictatorship and declare war on Germany.[43]

[40] Hohenlohe to Holstein, 22 August 1886 in Rogge *Holstein und Hohenlohe*, pp. 252–4; *BA Koblenz* N1007 Nr 1507, pp. 11–15.

[41] Daniela L. Caglioti, 'Waging War on Civilians: The Expulsion of Aliens in the Franco-Prussian War' *Past and Present* 221(1), 2013, pp. 161–95.

[42] On the domestic meanings of Boulangism within France, see for example Patrick H. Hutton, 'Popular Boulangism and the Advent of Mass Politics in France, 1886–1890', *Journal of Contemporary History* 11(1), 1976, pp. 85–106; Michael T. Burns, *Rural Society and French Politics: Boulangism and the Dreyfus Affair, 1886–1900*, Princeton University Press, Princeton, 1984; William D. Irvine, *The Boulanger Affair Reconsidered: Royalism, Boulangism and the Origins of the Radical Right in France*, Oxford University Press, New York, 1989; Bruce Fulton, 'The Boulanger Affair Revisited: The Preservation of the Third Republic, 1889', *French Historical Studies* 17(2), 1991, pp. 310–29; Peter M. Rutkoff, *Revanche and Revision: The Ligue des Patriotes and the origins of the Radical Right in France, 1882–1900*, Ohio University Press, Athens, 1981, pp. 39–53.

[43] 'Die Periode Boulanger', *Neueste Mittheilungen*, 7 June 1887, pp. 1–2.

In terms of French foreign policy, Boulanger's pugnacious refusal to accept the terms of the Treaty of Frankfurt (which had ceded Alsace and Lorraine to Germany after the Franco-Prussian War) meant that he was anathema to Berlin.[44] This was most evident when Boulanger's personal inspection of fortifications on the Franco-German frontier in January 1887 caused uproar throughout Germany and led Hohenlohe to enquire of Berlin how he should proceed should war with France break out.[45] In fact, Hohenlohe was better placed than most in Germany to understand the Boulangist phenomenon. As it happened, Hohenlohe had been in Paris on holiday in November 1886 and had then recorded his sense of what the Boulangist movement meant for relations with Germany and in particular Alsace-Lorraine:

> What has astonished me most on this visit is the change that has occurred in the position of General Boulanger. Even earlier this year Boulanger was seen as a '*farceur*', as someone with whom it was not necessary to reckon, as a shameless self-promoter etc. Now I am assured from people whose opinions I trust that his position has altered. Where he was once dependent upon Clemenceau, now Clemenceau is dependent upon him. He has not only the far and radical Left, but also the opportunists (and thereby the majority of the chamber) on his side. . . . Boulanger is someone who knows how to win over others, to impress and dazzle the masses. If he stays in office for another two years, the conviction that he is the man to defeat Germany and to reconquer Alsace-Lorraine will be the general one. As Boulanger is a man without scruples and consumed by ambition, the masses will be thrown into war.[46]

This was by no means an alarmist prediction. Boulanger's intransigent brand of irredentism, given voice in his work *L'invasion allemande: guerre Franco-Allemande de 1870–71*,[47] also saw his popularity soar in Alsace-Lorraine in the mid-1880s, when he was at the peak of his influence before his rapid descent and suicide in 1891.

Strongly supportive of Boulanger was Paul Déroulède's 100,000-strong *Ligues des Patriotes*, which was known in Germany as the *Patriotenliga*.[48] It too was an uncompromisingly revanchist movement, with Article Two of its statutes boldly announcing that the organization sought, 'the revision of the Treaty of Frankfurt and the restitution of Alsace and Lorraine to France'.[49] That this would entail a war with Germany was not something from which the leadership group clustered around Déroulède shied away. Rather, they saw such a war as 'an eventuality

[44] Rutkoff, *Revanche and Revision*, p. 43. For a typically polemic German response to Boulanger, see Constantin von Bosse, *Der Boulanger-Schwindel und die Patriotenliga: Ein offenes Wort zur Widerlegung französischer Legenden und Illusionen*, Rud Bechtold, Wiesbaden, 1889.

[45] Hermann Hiery, *Reichstagswahlen im Reichsland; Ein Beitrag zur Landesgeschichte von Elsaß-Lothringen und zur Wahlgeschichte des Deutschen Reiches*, Droste Verlag, Düsseldorf, 1985, pp. 220–1.

[46] Hohenlohe, journal entry 10 November 1886 in Hohenlohe, *Denkwürdigkeiten*, p. 400.

[47] Georges Boulanger, *L'invasion allemande: guerre Franco-Allemande de 1870–71*, J. Rouff, Paris, 1888.

[48] Peter M. Rutkoff, 'The Ligue des Patriotes: The Nature of the Radical Right and the Dreyfus Affair', *French Historical Studies*, 8(4), 1974, pp. 585–6.

[49] Hiery, *Reichstagswahlen im Reichsland*, p. 221.

whose historical and patriotic necessity was unquestioned'.[50] Contrary to the view of the French Marxist Paul Lafargue, who saw in Boulanger only a figure of ridicule incapable of truly provoking the Germans,[51] the League's loose talk about a war with Germany worried French conservatives, who feared that war might well break out not because of any prevailing German desire for war, but rather as a result of the goading of hyper-nationalist French populists, 'drunk with imagination'. The bellicose posturing of the *Ligues des Patriotes*, the conservative press fretted, would lead to a war with Germany merely 'to satisfy the fancy of Paul Déroulède or the ambitions of M. Boulanger'.[52]

In the atmosphere created by Boulanger and the *Patriotenliga*, the sense that there was a real threat of a revanchist war launched by an ultra-nationalist France led to concrete preparations being undertaken in Alsace-Lorraine.[53] With war apparently looming, warrants for 891 French citizens to be expelled were drawn up, ready to be signed by the *Bezirkspräsident* in the case of actual hostilities, despite the fact that the expulsion of Germans from France during the Franco-Prussian War had long been the source of perpetual outrage in Germany. While some of those listed were identified as belonging to pro-French organizations, others were simply described with the phrase 'suspect foreigner'.[54]

Rumours of espionage and revolutionary plots masterminded by French military agents also consumed the German Foreign Office and local officials in the *Reichsland*. Key public servants, ranging from postal officials, teachers, and bureaucrats through to train drivers, were appraised and vetted according to their political trustworthiness between August and November 1887. To this end, eighty-two postal and telegraph officials were given a score on a scale of one to five to assess their trustworthiness, whilst seventy-three officials from the rail, waterways, and road construction departments in the region of Chateau Salins in Lorraine were similarly assessed. This led to the blacklisting and expulsion of some officials to less politically sensitive areas in 1888. These suspect frontier officials were duly replaced by more trustworthy ones. At the same time, the attendance of school children at French schools was closely monitored.[55]

Characteristic of the alarm prevailing during the period was the lengthy and costly attempt to uncover the details of an apparent French military plot to overthrow German rule in Alsace-Lorraine. The far-fetched plot was the long-standing obsession of the grandly titled Chevalier Louis Narni Comte de San Vito, a self-proclaimed informer from Bari who had been peddling his conspiracy

[50] Rutkoff, *Revanche and Revision*, p. 36.

[51] Paul Lafargue, 'La question Boulanger', *Le Socialiste*, 23 July 1887.

[52] *Le Nouvelliste du Nord*, cited in William D. Irvine, 'Royalists and the Politics of Nationalism', in R. Tombs, *Nationhood and Nationalism in France. From Boulangism to the Great War, 1889–1918*. Harper Collins, London, 1991, pp. 109–11.

[53] For a summary of the mood and preparations of the preceding January, see 'Das "Wahlmanöver" bei den letzten Wahlen', *Neueste Mittheilungen*, 5 August 1887, pp. 1–2.

[54] *Archives Départementales de la Moselle (AD Moselle)* 13 AL 21. Mobilisation. Expulsion. Internement. Surveillance des bâtiments publics, 1873–1888. On the wartime expulsions of Germans from France, see Caglioti, 'Waging War on Civilians', pp. 161–95.

[55] *AD Moselle* 2 AL 95—Employés doteux près de la frontier, 1887–1918.

theories to Berlin since 1879 and preyed upon Germany's frontier anxieties.[56] Previously ignored, he was now taken seriously enough by Solms, the German ambassador in Rome, that his story was reported directly to Bismarck.[57] Until the end of 1887, Berlin defrayed Narni's travel expenses and disseminated his misinformation to German ambassadors and to Hohenlohe in Strasbourg, all of whom dutifully reported and investigated Narni's claims for almost half a year. In particular, authorities searched for a supposedly new and secret vanguard political party that was to have superseded the *Patriotenliga*. This party, Narni alleged, was orchestrated directly by Boulanger to foment revolution and subsequently war. A seemingly spontaneous revolt in the *Reichsland* was to be the signal for French military intervention to recover the territories. Implicating a French officer known only as 'D'Elya' as a key figure in this party, Narni argued:

> D'Elya informed me that he was an intimate friend of General Boulanger, and that a committee trained by Boulanger were preparing the grounds for a revolution in Alsace and Lorraine. I interjected that with such a strong German garrison in both provinces an uprising appeared unlikely, at which he countered that the revolution would nevertheless take place and that the outbreak of pre-arranged fires in public buildings would be the signal for the revolution. Boulanger would thereupon be proclaimed president of the Republic and the war of revenge would be declared.[58]

This revolutionary French cell, he divulged, was run by French officers, and aided by shadowy Russian and Danish co-conspirators.[59] These hazy transnational links were relentlessly pursued, particularly after Narni added to the drama from the safe distance of Bari, intimating in late November that 'the Russian' was already in Strasbourg and would remain there until 8 December.[60] It was reported too that this Russian agent foresaw that the coming war with France would see Russia's Tsar Alexander III drawn into a war with Germany against his will, and to this end, accompanying revolutionary plots were underway in the province of Posen to throw off the German yoke there as well.[61] Hohenlohe remained unimpressed by these increasingly wild rumours from Italy and wrote to Bismarck on 28 December 1887 to tell him that the intelligence drawn from Narni's sporadic reports was simply unreliable.[62]

[56] Preibusch, *Verfassungsentwicklungen im Reichsland Elsaß-Lothringen*, p. 300.

[57] Solms to Bismarck, 14 August 1887, in *Politisches Archiv des Auswärtigen Amts* (*PAAA*), R2987 'Angebliche Vorbereitungen zu einer Insurrektion in Elsaß-Lothringen' (unnumbered).

[58] Louis Narni, 'Dictat', 1 September 1887, pp. 5–6, in R2987 *PAAA*. 'D'Elya theilte mir dabei mit, daß er ein intimer Freund des Generals Boulanger sei und daß das von Boulanger gebildete Comité das Terrain für eine Revolution in Elsaß und Lothringen vorbereite. Ich warf ein, wie bei den starken deutschen Garnisonen in den beiden Provinzen mir eine Erhebung unmöglicherschiene, worauf er erwiderte, daß die Revolution dennoch stattfinden und der Ausbruch von in öffentlichen Gebäuden vorbereiteten Bränden das Signal für die Revolution sein würde. Boulanger würde darauf zum Präsidenten der Republik proklamirt und der Revanchekrieg erklärt werden.'

[59] 'Anlage zu Bericht 251', 15 November 1887, in R2987 *PAAA*.

[60] 'Telegramm', Rome, 26 November 1887, in R2987 *PAAA*.

[61] Solms to Bismarck, 24 December 1887, in R2987, *PAAA*.

[62] Hohenlohe to Bismarck, 28 December 1887, in R2987, *PAAA*.

As Hans Ulrich Wehler long ago made clear, the threat of a Franco-German war, which Bismarck had initially hoped to use as a cudgel with which to cow the pro-French population of Alsace-Lorraine during the 1887 election campaign, had an unintended effect. With every statement Bismarck made which gave a sense that war with France was looming, he offered hope to despairing French Alsatians that the territory might be won back in the near term by the French in the coming war.[63] Far from being cowed by the threat of war, members of the *Patriotenliga* in Alsace-Lorraine were emboldened, and the perception of them as an increasingly visible and dangerous fifth column that required expulsion *en masse* only increased as the rhetoric from Paris and Berlin became increasingly bellicose.

This putative threat from the *Patriotenliga* was compounded by the tense atmosphere in Germany more generally during the 1887 *Reichstag* elections. The key issue which had seen the *Reichstag* dissolved on 14 January 1887 was the failure of the government to pass the military budget for seven years (the so-called *Septennat*), with the *Reichstag* offering only a three-year deal. Defence and the nation's preparedness for war were therefore central election issues. Elsewhere in the empire this had translated into a discussion of the military capability and threat of Russia to the position of the Austro-Hungarian Empire and ultimately Germany, as well as to the uncertainty that had been unleashed by the lingering question of Egypt.[64] Yet in Alsace-Lorraine, the threat of war was consistently brought back to the most pressing local concern; namely the wave of Boulangism sweeping through France and the German border provinces.[65]

In February 1887, the provincial government of Alsace-Lorraine was made aware that the *Patriotenliga* was mobilizing locally in the run up to the elections, a state of affairs once again blamed upon the earlier laxity of Manteuffel's surveillance of pro-French groups.[66] Although aware of the actions of the *Patriotenliga*, Hohenlohe advocated waiting until after the 1887 elections before any crackdown or expulsions, so as not to stoke the French nationalist fire prior to the polls. This stance did not please Bismarck, who at this stage let it be known that 'the persecution of the *Patriotenliga* is more important than election results'.[67] More anxious to please Bismarck than Governor Hohenlohe, the beleaguered Hofmann approved a crackdown on pro-French agitators whilst Hohenlohe was in Berlin, with a number of homes of prominent *Patriotenliga* members searched and some

[63] Hans Ulrich Wehler, 'Elsaß-Lothringen von 1870 bis 1918', p. 157, reprinted in Hans Ulrich Wehler, *Krisenherde des Kaiserreichs 1871–1918*. (2nd edn), Vandenhoeck & Ruprecht, Göttingen, 1979, p. 39.

[64] Heinz Trützschler von Falkenstein, *Bismarck und die Kriegsgefahr des Jahres 1887*, Deutsche Verlagsgesellschaft für Politik und Geschichte, Berlin, 1924, pp. 30–2.

[65] Hiery, *Reichstagswahlen im Reichsland*, pp. 219–20.

[66] Martin Berger, *Pascal David und die politische Entwicklung Elsaß-Lothringens 1882–1907*, JF Lehmanns Verlag, Munich, 1910, p. 65.

[67] Holstein to Hohenlohe, 15 February 1887, in Rogge, *Holstein und Hohenlohe*, pp. 267–8. For Hohenlohe's rationale, see Hohenlohe to Holstein, 16 February 1887 Rogge, *Holstein und Hohenlohe*, p. 268. See too Volker Stalmann, *Fürst Chlodwig zu Hohenlohe-Schillingsfürst, 1819–1901. Ein deutscher Reichskanzler*, Ferdinand Schöningh, Paderborn, 2009, p. 177.

activists taken into custody. Far from rehabilitating Hofmann in the eyes of Berlin, however, once the election failed to deliver the hoped-for defeat to the French party in the *Reichsland*, Bismarck complained that Hofmann's crackdown had been too little too late; that is, that it should have occurred much earlier and should have included wholesale expulsions well before the election period.

Whilst the election was seen as a success for the parties of the *Kartell* more generally throughout Germany,[68] Bismarck blamed Hofmann's belated crackdown on the *Patriotenliga* for severely damaging the government electorally, conveniently forgetting his own enthusiasm for the suppression of French nationalists. For his part, Hohenlohe did not disagree with the view that the crackdown had contributed to the success of the pro-French Alsatian Party; indeed that is why he had consistently opposed such an action.[69] Privately, Hohenlohe told Holstein that unlike Bismarck he had not seen any serious threat in the *Patriotenliga* prior to Hofmann's intervention,[70] particularly given the generally positive local election results for German nationalists in July 1886.[71] In his own appraisal of the election, Hohenlohe revealed his sense that the reports of a huge electoral loss were highly exaggerated,[72] but nonetheless resolved to act to assuage local sentiment:

> The elections here are the result of all sorts of unfortunate circumstances. Fear of France in the case of war, hopes of the victory of Boulanger, anxiety about further burdens that the *Septennat* would impose, and above all the pro-French spirit of the clergy. Additionally there was the stupidity of German officials. As a result of the elections, the Germans here are in a state of high outrage and believe that something really extraordinary must happen to restore the insulted German national sensibility. They are demanding that the provincial assembly be abolished, that Alsatians must have the right to vote in Reichstag elections stripped from them, and they also believe that I will resign. I am remaining calm and will proceed strictly against the French and optants, and will wait for better days.[73]

Although privately unperturbed by the election results, which had so greatly disappointed the German nationalists of the *Reichsland*, Hohenlohe took a stern line publicly, stating that in light of the election results he now saw the need for renewed and stricter measures, including expulsions, against French agitators. In an attempt to use the situation to renew the administrative personnel of the provinces, Hohenlohe joined the chorus of voices now criticizing his state secretary, Hofmann.[74] Hohenlohe argued that Hofmann's apparent past history of leniency and then last minute conversion to an ill-advised electoral period crackdown while he had been away had created a situation in which the local mechanics of

[68] Jonathon Sperber, *The Kaiser's Voters*, pp. 193–202.
[69] Hohenlohe to Holstein, 20 February 1887, in Rogge, *Holstein und Hohenlohe*, pp. 271–2.
[70] Hohenlohe to Holstein, 9 March 1887, in Rogge, *Holstein und Hohenlohe*, pp. 279–80, Stalmann, *Fürst Chlodwig zu Hohenlohe-Schillingsfürst*, p. 178.
[71] Hohenlohe to Bismarck, 20 July 1886, in Rogge, *Holstein und Hohenlohe*, p. 249.
[72] Hohenlohe to Ratibor, 5 March 1887, in Rogge, *Holstein und Hohenlohe*, pp. 277–8.
[73] Hohenlohe to Ratibor, 26 February 1887, in Rogge, *Holstein und Hohenlohe*, pp. 273–4.
[74] Bismarck to Hohenlohe, 21 February, 1887, Hohenlohe, journal entry 22 February 1887, in Hohenlohe, *Denkwürdigkeiten*, pp. 409–10, See too Hiery *Reichstagswahlen im Reichsland*, p. 222.

power dictated that he be replaced by Max von Puttkamer in the position of State Secretary of the Ministry for Alsace-Lorraine:

> The election result demands of the government of Alsace-Lorraine to proceed more strictly than has been done in the past against the assertion of French tendencies and against the French residing here, whether they be French nationals or optants, and must make use of all available measures for the security of the country in general, particularly given the possibility of the outbreak of war between Germany and France. . . . The election result, and the recognition of the prevailing mood of the population that it has prompted, rules out any leniency. The present state secretary is regarded by locals and German officials as a proponent of the hitherto lenient system, and for him to remain in office would give credence to the concern that the measures seen as necessary will not be carried out seriously.[75]

Hohenlohe formally informed Bismarck of his decision to replace Hofmann on 5 March 1887.[76]

This guiding 'prevailing mood of the population', in particular the vehement indignation of German nationalists, was amply demonstrated by the ever more insistent calls for the radicalization of Germanization measures in Alsace-Lorraine and plans for the disenfranchisement of French nationalists in the *Reichsland* which had bombarded Hohenlohe since the *Reichstag* elections.[77] One nationalist advised Hohenlohe that all candidates in subsequent elections should be forced to swear a public oath of loyalty to the German Empire and the Kaiser, thereby excluding disloyal Francophiles from running,[78] a suggestion that was taken as far as the drafting of a law to that effect.[79] The *Straßburger Post* was similarly vocal in its support for the introduction of draconian measures, including vaguely termed 'residency restrictions', through the *Diktaturparagraph*, declaring:

> The elections have shown us that Germandom is under severe threat in this territory. It is now time for serious measures. We wish neither to punish the provinces nor to revenge ourselves upon the voters, however we have the right and the duty to ensure the security of the German Empire and our own security. . . . This can only happen if the right to vote for the German Reichstag is suspended here. Thereafter should come restrictions on residency permits for foreigners within Alsace-Lorraine, and surveillance of civil society associations. Reforms to the training and education of Catholic clerics in line with German interests, and the same with regard to the

[75] Hohenlohe to Wilmowski, 12 March 1887, in Rogge, *Holstein und Hohenlohe*, pp. 280–1.

[76] Hohenlohe, *Denkwürdigkeiten*, pp. 411–12.

[77] For a general discussion of the election and its consequences for Alsace-Lorraine, see Hiery *Reichstagswahlen im Reichsland*, pp. 219–48; Preibusch. *Verfassungsentwicklungen im Reichsland*, pp. 276–318.

[78] *BA Koblenz* N1007/1544 'Memorandum eines Ungenannten betr die Verhinderung der Wahl deutschfeindlicher Reichstagabgeordneter in Elsaß-Lothringen.'

[79] *BA Koblenz* N1007/1503 'Die elsaß-lothringenische Krise im Frühjahr 1887', p. 19. 'Gesetz Entwurf betreffend den von den elsaß-lothringischen Landesangehörigen vor Austellung der Kandidatur zu einer Wahlmandat oder vor Antritt eines öffentlicher Amtes zu leistenden Eid.' The text of the oath reads 'Ich schwöre Gehorsam der Verfassung des deutschen Reiches und Treue dem deutschen Kaiser. Ich erkenne durch diesen feierlichen Eid die durch den Friedenvertrag vom 9 Juni 1871 auf immer ausgesprochene Vereinigung vom Elsaß und von Lothringen mit dem deutschen Reiche an.'

> education of girls. Dissolution of local councils and provisional administration in areas with a Protestant majority.[80]

Yet the German nationalists did not have it all their own way, with one pamphleteer critically assessing the new mood, arguing against any overreaction based on residual resentment from the period of the 'System Manteuffel', and urging Germans not to endorse the ultimatum of the *Straßburger Post* to the state's pro-French population, that they must 'love us or fear us':

> And now a storm of complaints arises from the German press regarding the present system, a storm of suggestions for a radical change in things. Annexation by Prussia, dismemberment of the state and partition between four or five German princes, intensification of the dictatorship, abolition of the provincial assembly, abolition of the local councils which for the most part have voted against the pro-government candidates, expulsion of all optants, removal of all of those born locally from public office. . . . The basic tone that sounds behind this entire movement is: *Revanche pour Manteuffel*![81]

The strident complaints from local officials and German nationalists, the debates about the correct course of action in the press and the terse missives from Berlin demanding mass expulsions, were all taken into consideration by Hohenlohe, who weighed these competing interests against his own political judgement before charting a comparatively moderate but discernibly sterner course. In light of his assessment that there was a need for some form of visible action in the wake of the electoral 'defeat', Hohenlohe resolved to change the political tone of the provinces without lurching towards wholesale repression along the lines desired by Berlin and German nationalists. Among his strategies, was a plan to be seen to be cracking down on French residents and optants, which would hopefully meet the expectations of the provinces' German nationalists. As a result, expulsions occurred with increasing frequency in Alsace-Lorraine after the election.

One deeply symbolic expulsion that captured the attention of the press and demonstrated a distinct shift in policy between Manteuffel and Hohenlohe was the case of the veterinarian and pro-French *Reichstag* deputy for Metz, Antoine, who had long been a thorn in the side of German authorities in Alsace-Lorraine. Under Manteuffel, Antoine had been the public face of the local Francophile supporters of the *Patriotenliga*. Correspondingly, he had become the focus of local authorities' attempts to control anti-German sentiment. Antoine had already been tried for treason in 1883 without success.[82] As early as 1885 Bismarck had requested that Manteuffel and Hofmann expel Antoine, but Manteuffel had refused the request with the characteristic response, 'I will not make political martyrs. I have come here to heal wounds, not to open new ones.'[83] Under Hohenlohe, however, renewed pressure was applied to Antoine and his followers. Prior to the February

[80] *Straßburger Post*, 24 February 1887, as cited in Berger, *Pascal David*, pp. 60–1.
[81] Anon, *Stimmung und Verstimmung im Reichsland. Von einem deutschgesinnten Elsäßer*, C Detloff's Buchhandlung, Basel, 1887, pp. 12–16.
[82] Sendler, *Fürst Chlodwig zu Hohenlohe-Schillingsfürst als Statthalter*, p. 66.
[83] von Puttkamer, *Die Aera Manteuffel*, p. 134.

1887 elections in particular, public servants had been warned that agitation for Antoine would lead to the suspension of their employment, while the editor of the pro-Antoine *Moniteur de la Moselle* was expelled from the region on 4 February Stepping up this pressure in the post-election environment, Antoine himself was expelled. After his successful re-election, Antoine had gone on daily trips into the countryside in order to whip up support with his message that Germany now feared France and that the French were about to strike to retake the provinces. In the face of such flagrant disloyalty to the nation in whose parliament he now sat, Hohenlohe expelled the re-elected Protest Party representative on 31 March 1887, ensuring that Antoine could not represent the pro-French majority of Metz in the *Reichstag*.[84] This was triumphantly celebrated in the *Straßburger Post* as the beginning of a coming wave of expulsions:

> Of the measures agreed upon by the governor and the chancellor, the expulsion of all agitators, whether citizens or foreigners is one of the most important. The expulsion of Antoine corrects one of the worst of Manteuffel's sins of omission, albeit very belatedly.[85]

Yet, despite the seemingly untrammelled powers of the *Diktaturparagraph*, intense pressure from Berlin-based political figures and the expectations of the nationalist press, Hohenlohe was arguably quite cautious in his movement away from the ostensibly lenient security measures that nationalists believed had characterized the Manteuffel era. Nonetheless, under circumstances considered to be verging on war with France, somewhere in the vicinity of 1,000 French nationals were expelled from the *Reichland* between 1887 and 1890,[86] in comparison to the 227 expulsions ordered under Manteuffel between September 1884 and August 1886.[87] As the correspondence between Berlin and Strasbourg from April to June 1887 shows, this rise in the number of expulsions may have been far more dramatic, had the governor followed the course of action prescribed by the demonstrably impatient triumvirate of Bismarck, Karl Heinrich von Bötticher, and Holstein, who continuously pressed Hohenlohe to authorize drastic measures to address the problem of French nationalism in the region. Holstein argued strenuously that 'very powerful measures' should be used, that the expulsion *en masse* of all those affiliated with the *Patriotenliga* would have 'a splendid effect in all of Germany'.[88] Hohenlohe, he argued, would be well advised to heed Bismarck's

[84] For Antoine's expulsion, see *BA Koblenz* N1007/1503 'Die elsaß-lothringenische Krise im Frühjahr 1887', p. 86, *Neueste Mittheilungen*, 5 April 1887, p. 4. See too Hiery, *Reichstagswahlen im Reichsland*, pp. 230, 237, 245.

[85] Berger, *Pascal David*, p. 64.

[86] *AD Moselle* 3 AL 202, 'Acquisition et perte de la nationalité. Statistiques, 1873–1918'; *(AD Moselle)* 2 AL 95, 'Police générale, affaires concernant les étrangers, la langue dans les écoles, des fonctionnaires et des personnes particulières, 1872–1918'; Roth, *La Lorraine Annexée*, pp. 121–3.

[87] *BA Koblenz*, N1007/1507 'Im militärischen Interesse gebotene Maßnahmen der Sicherheits- und Fremdenpolizei gegen Spionage usw; ein zusammenfassender Bericht v Hofmanns vom 18 August 1886 nebst Anlagen', p. 38.

[88] Ratibor to Hohenlohe, 4 April 1887, Holstein to Hohenlohe, 2 May 1887, Holstein to Hohenlohe, 15 May 1887 in Rogge, *Holstein und Hohenlohe*, pp. 283–316.

frequent urging for a greatly increased use of the expulsion powers available under §10 without consideration of its effects of French public opinion.[89] Yet, whilst expanding the expulsion measures to suit his own purposes, Hohenlohe persisted in his policy of targeted expulsions, refusing all suggestions that he radically escalate the situation through mass expulsions and robustly arguing against a 'questionable' Germanization by regulation.

Irrespective of the wishes of the chancellor, Hohenlohe insisted that he would expel only those he saw as a real threat. He would not permit blanket, mass expulsions. Shortly after the *Reichstag* elections, Hohenlohe had already taken measures to ensure that any decisions on who would be expelled were informed ones. On 15 March 1887, Hohenlohe asked his *Bezirkspräsidenten* to send a list of suggestions for activists to be expelled.[90] When, however, the resulting initial list of thirty-one names threw up the suggestion of expelling the influential glass factory directors Paul and Albert Thouvenin in Vallerysthal, Hohenlohe simply refused to countenance these on the grounds that doing so would have a negative impact on too many of the region's factory workers.[91] Despite the heightened post-election nationalist mood, regional economic and political stability remained Hohenlohe's main priorities, just as they had been Manteuffel's.

Similarly, despite eventually facilitating the decision to close the border to all French citizens not in possession of a residency permit,[92] Hohenlohe initially came out strongly against population control along the border (the so-called *Paßzwang*), arguing that the 'measures hitherto in use are sufficient' and that further stringent border controls would lead to further difficulties in already severely strained Franco-German relations.[93] Importantly, because the measures related to Germany's border with France rather than a strictly provincial matter, Hohenlohe effectively had no choice but to allow the border control measures to

[89] *BA Koblenz* N1007/1478, 'Privatdienstkorrespondenzen in elsaß-lothringenschen Angelegenheiten', Bismarck to Hohenlohe, 21 June 1887, 7 July 1887, 17 October 1887, pp. 11–14, 31–2, Holstein to Hohenlohe, 2 May 1887, Holstein to Hohenlohe, 24 May 1887, Bismarck to Hohenlohe, 12 November 1887, in Rogge, *Holstein und Hohenlohe*, pp. 283–316.

[90] *AD Moselle* 2 AL 96, 'Expulsions d'etrangers, 1878–1918'. The directive read: 'Es ist in Aussicht genommen, durch geeignete Maßnahmen dahin Vorkehrung zu treffen, daß das politische Verhalten und der politische Einfluß der im Gebiete des Reichslandes sich aufhaltenden Ausländer eingehend geprüft und gegen solche Ausländer, deren Anwesenheit, den deutsche Interessen schadet, eingeschritten und nach Befinden die Ausweisung verfügt wird. Indem ich mir vorbehalte, Ihnen in dieser Beziehung demnächst weitere Mittheilungen zugehen zu lassen, ersuche ich Sie mit mir Thunlichster Beschleunigung und zwar spätestens bis zum 1 April dJ ein Verzeichniß derjenigen Ausländer mitzutheilen, von denen Sie *schon jetzt* überzeugt sind, in deutschfeindlichen Sinn wirken und nicht länger im Lande geduldet werden können.'

[91] 8th August 1887, *AD Moselle* 2 AL 95—Employés doteux près de la frontier, 1887–1918, Section 'Akten betr Ausweisung der französischen Direktoren der Glassfabrik Vallerysthal'.

[92] Christopher Fischer, *Alsace to the Alsatians: Visions and Divisions of Alsatian Regionalism, 1870–1939*, Berghahn, New York, 2010, p. 13.

[93] *BA Koblenz* N1007/1512, 'Bettr. die Anführung des Passzwanges', p. 7; Hohenlohe to Wilmonsky, 10 May 1888, *BA Koblenz*, N1007/1472, 'Verschiedene Elsaß-Lothringenische Sachen 1887', p. 12. See too Hohenlohe, journal entry, 8 May 1888, in Hohenlohe, *Denkwürdigkeiten*, p. 432; Hohenlohe to Holstein, 2 May 1887, in Rogge, *Holstein und Hohenlohe*, pp. 291–3; Preibusch, *Verfassungsentwicklungen im Reichsland Elsaß-Lothringen*, p. 300.

be implemented by the federal government. As a matter of regional security, expulsions were a matter of absolute discretion for the governor, requiring neither the approval of the *Reichstag* nor indeed that of the chancellor. Bismarck made clear, however, that the question of regulating the border with France was not merely a regional question, but a broader question of national sovereignty, and therefore not covered by the *Diktaturparagraph*.[94] As on the question of expulsions, Bismarck commented to Hohenlohe with regard to the issue of border controls that it was necessary to show Germany's mettle in the face of the Boulangist mood in France and a seeming shift towards a policy of expelling suspect Germans from border regions in France.[95] The difference here, however, was one of jurisdiction. With no choice but to capitulate to the centre on the regulation of the Franco-German border, Hohenlohe stood firm against the chancellor on strictly internal issues, including but not limited to expulsions. When, for example, Bismarck advocated disenfranchising the citizens of Alsace-Lorraine in light of their disloyal voting patterns, Hohenlohe countered:

> It cannot be forgotten that the introduction of the general franchise to the country gives it the right to express its opinion. The fact that the region has spoken out in a fashion that contradicts the outlook of the government and the German nation does not give the government the right to infringe the constitutional rights of the region. . . . You do not seek to cure a case of fever by cutting the throat.[96]

Notwithstanding the relative lack of constitutional limits imposed upon him by the anomalous legal framework of the *Reichsland* and the vociferous demands of German nationalists in the region, Hohenlohe trod a cautious middle path between the Francophile sensitivities of Manteuffel and the more radical impulses of a chancellor seeking to use mass expulsions as a means of ensuring that a resurgent France would not mistake Germany's resolve. The significant increase in the rate of expulsions and other restrictive security measures enacted within the *Reichsland* in 1887 and thereafter could very well have been a radical wave of mass expulsions that purged Alsace-Lorraine of its French nationals and pro-French optants, had the governor been someone more malleable than Hohenlohe.

That said, there is evidence to suggest that the extent of the expulsions was much greater than originally intended by Hohenlohe, suggesting that Hohenlohe had originally wished to emulate rather than distance himself from the Manteuffel era. The gap between the list of several dozen expellees submitted by local authorities and the final number of those expelled seems to have surprised Hohenlohe.

[94] *BA Koblenz* N1007/1512, 'Bettr. die Anführung des Passzwanges', pp. 23–6. While the grievously ill Kaiser was in two minds on the question, his son the Crown Prince was in favour of the measures. See Hohenlohe's journal entry 25 May 1888, in Hohenlohe, *Denkwürdigkeiten*, pp. 435–6.

[95] Hohenlohe, journal entry 30 May 1888, in Hohenlohe, *Denkwürdigkeiten*, pp. 437–8. In mid-May, ten German workers had been expelled from a border region in France, ostensibly as a pre-emptive measure to stop them from spying on nearby Fort Marainville. 'Ausweisung deutscher Arbeiter aus Frankreich', *Neueste Mittheilungen*, 14 May 1887, p. 3.

[96] Hohenlohe, cited in Hermann Hiery *Reichstagswahlen im Reichsland*, p. 239. As Hiery makes clear, this was also related to Bismarck's similar designs to disenfranchise known Social Democrats.

While triggered by the governor's 15 March 1887 request to municipal authorities for a list of the names of those who should be expelled, the number of expulsions authorized by local authorities thereafter quietly ballooned.[97] Initially, the response was quite modest, with two names put forward in Bolchen, nine from Château Salins, four from Diedenhofen, five from Forbach, five from Saargemünd, and six from Metz. The reason given for nominating this handful of individuals for expulsion clearly suggested that it was their pro-French political work and affiliation that had aroused the attention of local German officials, with the terms 'anti-German' (*deutschfeindlich*) and 'political attitude' (*politische Haltung*) usually offered as sufficient grounds for their removal.[98]

These relatively modest numbers, however, belie the eventual scale of the expulsions which proceeded apace at the local level with scant attention to their responsibility to report them to the governor, as a series of reports from 1890 clearly illustrate. When on 20 August 1890 the Ministry for Alsace-Lorraine in Strasbourg inquired into the number of expulsions which had taken place between 1887 and 1890 and the grounds for these expulsions, the reply took *Bezirkspräsident* Hans von Hammerstein-Loxten, who was collating the data, by surprise. From an original pool of thirty-one in 1887, 1,044 people had been expelled by 1890. The exact percentage of these expulsions that were politically motivated is difficult to ascertain, however what is clear is that only 18 per cent were specifically related to criminal activity, and 8 per cent to unspecified infractions against 'morality' (*Sittlichkeitsgründen*), whereas 42 per cent were explicitly listed as relating to political or military considerations, while 32 per cent were unspecified and listed as 'other grounds' (see Table 8.1). That the appellation 'other grounds' also housed numerous, politically motivated expulsions became evident when a further breakdown of the figures from this category was requested, and phrases such as 'due to anti-German sentiment', 'under suspicion of serving French propaganda', and 'on political grounds', appeared alongside the eminently flexible 'residency without permission'. Somewhat perplexed, Hammerstein wrote in the margin of the reports from Forbach and regional Metz that their figures in particular greatly exceeded his official figures, which were based on the 1887 correspondence between the *Bezirkspräsidenten*.[99] Not only had Hohenlohe been acting independently of Berlin, his municipal authorities appeared to have been acting independently of him.

As a territory that lay outside the constitutional delineation and assignation of sovereign state power, Alsace-Lorraine was an anomalous legal jurisdiction which concentrated political control in the hands of its governor. Although the governor was officially the nominee of the Kaiser, who maintained formal legal responsibility for the *Reichsland*, in all internal political and security affairs within the former French provinces, the governor enjoyed a free hand. That both Manteuffel and

[97] *AD Moselle* 2 AL 96 Expulsions d'etrangers, 1878–1918.
[98] *AD Moselle* 2 AL 96 Expulsions d'etrangers, 1878–1918.
[99] *AD Moselle* 2 AL 202. Acquisition et perte de la nationalité d'un état confédéré ou de l'Empire. Statistiques, 1873–1918.

Table 8.1. **Expulsions in Alsace-Lorraine by region, year and justification.**

District/year	Number expelled	Of which criminals	Of which due to moral infractions	Of which political/ military grounds	Of which other grounds
Metz (city) 1887	116	8	14	21	73
1888	53	10	11	6	26
1889	29	3	12	2	12
1890	37	12	11	2	12
Bolchen 1887	9	3	0	2	4
1888	15	4	3	0	8
1889	10	3	0	0	7
1890	4	0	0	4	0
Château Salins 1887	30	2	0	17	11
1888	29	8	0	4	17
1889	39	4	0	1	34
1890	16	2	2	0	12
Diedenhofen 1887	62	10	3	17	32
1888	60	26	9	5	20
1889	43	14	3	8	18
1890	28	9	1	5	13
Forbach 1887	31	5	2	22	2
1888	17	1	0	14	2
1889	20	3	1	14	2
1890	16	4	2	9	1
Metz (regional) 1887	45	9	0	35	1
1888	48	7	2	39	0
1889	79	6	4	69	0
1890	78	8	0	66	4
Saarburg 1887	21	4	0	16	1
1888	28	8	0	17	3
1889	24	6	1	16	1
1890	20	6	0	14	0
Saargemünd 1887	10	1	1	7	1
1888	11	1	0	4	6
1889	9	0	0	2	7
1890	7	2	0	0	5

Hohenlohe could resist the urge of the German Chancellor to push the number of expulsions from the hundreds into the thousands demonstrates the extent of the political and legal separation of Alsace-Lorraine from the rest of the Reich. The responsiveness of the governors to local conditions mitigated the severity of the expulsions threatening those French nationalists who came to be viewed as a threat to the territorial and political integrity of the empire. Despite (or perhaps due to) the apparent *carte blanche* offered to the governors by the *Diktaturparagraph*, the

expulsions in Alsace-Lorraine under Hohenlohe scarcely deviated from the intent of Manteuffel's targeted expulsion policy, even if in the furore over the 1887 election a discernible increase in the rate of expulsions occurred. Crucially, however, the mass expulsions from the empire that were visited upon the Poles of Prussia never eventuated, despite the steady activism of German authorities below the governor who felt free to expel French citizens in numbers that greatly exceeded their 1887 targets.

Given the extraordinary constitutional arrangements pertaining to Alsace-Lorraine, Governors Manteuffel and Hohenlohe were able to successfully resist the pressure from Berlin and local German nationalists to revolutionize the politics and demographics of the region through an aggressive purge of French nationalists. Instead, under the cover of the disinterested 'confidence of the Kaiser', they were both, in differing ways and under different conditions, able to manage potentially volatile events in a way that was responsive to local political dynamics; managing the revanchism of the Boulangist *Patriotenliga* on the one hand and the assimilationist, Germanizing pressures of German nationalists on the other.

9

Stabilizing the Empire

Expulsions in German Southwest Africa

In a precedent-setting case that sparked the interest of German legal experts and became a focal point for discussion at the 1910 German Colonial Congress, Lieutenant Victor von Alten lodged a damages complaint against Friedrich von Lindequist, on the grounds that, during his time as governor, Lindequist had illegally expelled him from German Southwest Africa. Having fought in the 1896 disturbances in the colony and then established himself as a farmer in the colony over the course of almost a decade, the lieutenant had gone on to be repeatedly prosecuted and gaoled for interracial homosexual conduct under §175 of the imperial penal code. After he had served his sentence, Lindequist expelled him from the colony in 1906, sending him back to Germany for conduct that 'impeded colonising efforts'. The lieutenant claimed, however, that as he was a German citizen enjoying the full protection of §1 of the 1867 *Freizügigkeitsgesetz* which prohibited the state from expelling its troublesome or undesirable citizens, it was unlawful to deport him from any German territory. The Berlin civil court, however, saw things otherwise and rejected his damages claim, arguing instead that, unlike the German mainland, the German colonies were subject to neither the German constitution nor the institutions of law that emanated from it. Expulsions from the colonies were therefore permissible, irrespective of the citizenship status of those targeted.[1]

This case of the expulsion of a military veteran and colonist from German Southwest Africa is pregnant with analytical possibilities. The case hinged on a number of social and cultural transgressions, most prominently homosexuality and interracial sexual relations, which were sufficiently shocking at the time that press and legal discussions of the case deployed a veil of coyness in their descriptions of it.[2] So too, Lindequist's decision that a settler's personal sexual conduct

[1] The case is discussed in detail in BA Berlin R100/7547 Ausweisungen aus den deutschen Schutzgebieten. Allgemeines, pp. 28–30, 66–8.

[2] For reporting on the case, see *Deutsch-Ostafrikanische Zeitung*, 21 May 1910, p. 1. For the case's reverberations in legal scholarship, see for example Max Fleischmann, 'Die Ausweisung von Reichsangehörigen aus den deutschen Schutzgebieten', *Koloniale Rundschau*, 1909, pp. 645–7; R. Wiesmann, ',Können Deutsche aus den deutschen Schutzgebieten ausgewiesen werden?' in Georg Jellinek, Paul Laband, Otto Mayer, and Robert Piloty (eds), *Archiv für Öffentliches Recht* 26, Verlag von JCB Mohr, Tübingen, 1910, p. 331; Egon Kruckow, *Ausweisungen aus den deutschen Schutzgebieten*, Buchdruckerei Paul Greffin, Berlin, 1913, p. 53.

could jeopardize the colonizing efforts of the German state offers a telling insight into the biopolitical dimension of an imperial enterprise more obviously marked by the deployment of military and economic power.[3] Indeed in the figure of Alten, the intersectional nature of imperial military and biopolitical differentials generated by gender, sexuality, race, and class in the German colonies was clearly on display,[4] with the governor's charge of dangerous, interracial sexual incorrigibility clearly juxtaposed against Alten's status as an army veteran who had earned a commendation from the Kaiser in 1896 for his brave conduct in a colonial war against the indigenous population.[5]

The seeming legal incongruities surrounding the case are just as intriguing. Notwithstanding the fact that Alten had originally been sentenced to gaol in German Southwest Africa under §175 of the *Reichsstrafgesetzbuch*, his civil claim against Lindequist's expulsion order was denied on the grounds that domestic German law did not necessarily always apply in the colonies. Under this legal ruling, Alten's expulsion was permissible irrespective of the domestic effects of the 1867 *Freizügigkeitsgesetz* within Germany. This decision drew on the text of the German constitution which made perfectly clear to which territories it applied in Article One and Article Two.[6] The colonies were simply not amongst them.

Situated in the legal history of the *Kaiserreich* in the same way that Alsace-Lorraine was in the interregnum between its absorption by Germany and the granting of constitutional reforms there in 1911,[7] the colonies, or more correctly German dependencies (*Schutzgebiete*), were generally perceived by legal theorists as areas parenthesized from the guarantees of the constitution and the concomitant regulatory role of German law. This point was sometimes contested, albeit unsuccessfully, by German jurists on the grounds that the 1886 Protectorate Act reinstated German civil law,[8]

[3] For the broader history of interracial homosexuality and biopolitics in the German colonies, see Daniel J. Walther. 'Racializing Sex: Same-Sex Relations, German Colonial Authority, and *Deutschtum*', *Journal of the History of Sexuality* 17(1), 2008, pp. 11–24. On homosexuality in other colonial contexts, see Robert Aldrich, *Colonialism and Homosexuality*, Routledge, New York, 2003. For the military and economic aspects of colonialism in German Southwest Africa, see especially Helmut Bley, *Namibia under German Rule*, Lit Verlag, Hamburg, 1996; Horst Drechsler, *Let Us Die Fighting*, Zed Books, London, 1980; Jürgen Zimmerer, *Deutsche Herrschaft über Afrikaner. Staatlicher Machtanspruch und Wirklichkeit im kolonialen Namibia*, Münster, Lit Verlag, 2002.

[4] For studies in this vein, see Lora Wildenthal, *German Women for Empire, 1884–1945*, Duke University Press, Durham, 2001; Sara Lennox, 'Race, Gender and Sexuality in Southwest Africa: Hans Grimm's Südafrikanische Novellen', in E. Ames, M. Klotz, and L. Wildenthal, *Germany's Colonial Pasts*, University of Nebraska Press, Lincoln, 2005, pp. 63–75; Matthew P. Fitzpatrick, '"The Threat of Woolly-Haired Grandchildren": Race, the Colonial Family and German Nationalism', *The History of the Family*, 14, 2009, pp. 356–68. Beyond the German case, the field-defining work continues to be Ann L. Stoler, *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*, Duke University Press, Durham 1995.

[5] Max Fleischmann, 'Die Ausweisung von Reichsangehörigen', p. 646.

[6] *Verfassung des Deutschen Reichs*, pp. 64–5.

[7] C. C. Eckhardt, 'The Alsace-Lorraine Question', *The Scientific Monthly* 6(5), 1918, pp. 434–5.

[8] For a breakdown of the precise positions taken with regard to the legal status of the colonies, see Victor von Poser und Gross-Naedlitz, *Die rechtliche Stellung der deutschen Schutzgebiete*, M&H Marcus, Breslau, 1903, p. 45. On comparisons with Alsace-Lorraine, see Schreiber. 'Die rechtliche Stellung der Bewohner der deutschen Schutzgebiete', *Zeitschrift für Kolonialpolitik, Kolonialrecht*

however, the mainstream legal position was that the German colonies were sites external to the constitutional *Rechtsstaat*, and subject to the prerogative power of the Kaiser.[9] Paragraph One (§1) of the 1886 Protectorate Law made it clear that in Southwest Africa, 'sovereign power is exercised by the Kaiser in the name of the Reich'.[10] This meant that, strictly speaking, the colonies were not able to enact and enforce exceptional laws (*Ausnahmegesetze*) stemming from the declaration of a constitutionally enabled '*Kriegszustand*' (as outlined in Article 68 of the constitution) or '*Belagerungszustand*' (as delineated by the Prussian Law of 4 June 1851 which was the basis of Article 68). This was because the colonies existed in a space external to the clearly delineated geographical limits of the German constitution (and thus Article 68) and the perpetual jurisdiction of the *Reichstag* and *Bundesrat*.[11] Given this apparent lack of constitutional restraints on the Kaiser's power over the *Schutzgebiete*, one contemporary jurist noted that the qualitative differences in the nature of imperial power exercised by the Kaiser amounted to two separate forms of imperial rule—domestic constitutional monarchy and the prerogative 'colonial' state.[12]

A reading of this situation stemming from Agamben or Schmitt's understanding of the importance of the legal exception in locating sovereignty might see this as clear evidence of the colonies as zones of exception that unmask the Kaiser's metajuridical sovereignty over the colonial periphery.[13] As Lauren Benton has repeatedly emphasized, however, positing any strict dichotomy between metropolitan

und Kolonialwirtschaft 6, 1904, p. 761; Herbert Hauschild, *Die Staatsangehörigkeit in den Kolonien*, JCB Mohr, Tübingen, 1906, p. 27.

[9] Karl von Stengel, *Die Rechtsverhältnisse der deutschen Schutzgebiete*, JCB Mohr, Tübingen, 1901, pp. 33, 38ff. On the relationship between the colonies and the German constitution, see Marc Grohmann, *Exotische Verfassung: Die Kompetenzen des Reichstags für die deutschen Kolonien in Gesetzgebung und Staatsrechtswissenschaft des Kaiserreichs (1884–1914)*, Mohr Siebeck, Tübingen, 2001.

[10] 'Gesetz betreffend der Rechtsverhältnisse der deutschen Schutzgebieten', *Reichs-Gesetzblatt*, Nr 10, 17 April 1886. '§1: Die Schutzgewalt in den deutschen Schutzgebieten übt der Kaiser im Namen des Reiches aus.' For a discussion of exceptions to this, such as the right to naturalize foreigners and indigenous people, budgetary control and freedom of religion, see Poser und Gross-Naedlitz, *Die rechtliche Stellung der deutschen Schutzgebiete*, pp. 60–5.

[11] For Wilhelmine attempts to argue for the jurisdiction of the *Reichstag* and the domestic constitution (based on the Reich's competency to establish colonies granted by Article 4 Paragraph 1 of the *Reichsverfassung* amongst other things) see Friedrich Giese, 'Zur Geltung der Reichsverfassung in den deutschen Kolonien', in *Festgabe Bonner juristischen Fakultät für Paul Krüger zum Doktor Jubiläum*, Weidmann Verlag, Berlin, 1911, pp. 417–46. Also on this, as well as the debate about whether the colonies should be designated as 'Inland', 'Ausland', 'Reichsnebenland', 'Nebenstaat', or 'Außerdeutsche Reichslande', see Simon Reimer, *Die Freizügigkeit in den deutschen Schutzgebieten inbesondere die Ausweisung von Reichsangehörigen*, Verlag der Universitäts-Buchhandlung Franz Coppenrath, Münster, 1911, pp. 8–12.

[12] Friedrich Giese, 'Zur Geltung der Reichsverfassung in den deutschen Kolonien', in Juristische Fakultät Bonn, *Festgabe Bonner juristischen Fakultät für Paul Krüger zum Doktor Jubiläum*, Weidemann, Berlin, 1911, p. 436.

[13] For attempts to tease out the implications of Agamben's use of the concept of the state of exception in studying colonial settings, see Stephen Morton, *States of Emergency: Colonialism, Literature and Law*, Liverpool University Press, Liverpool, 2013; Marcelo Svirsky and Simone Bignall (eds), *Agamben and Colonialism*, Edinburgh University Press, Edinburgh, 2012; Scott Morgensen, 'The Biopolitics of Settler Colonialism: Right Here, Right Now', *Settler Colonial Studies* 1(1), 2011, pp. 52–76; Arjun Chowdhury 'The Colony as Exception (Or Why Do I Have to Kill You More than Once?)', *Borderlands* 6(3), 2007.

spheres of law and excised colonial zones of exception oversimplifies the unevenness of actual expressions of imperial sovereignty.[14] Benton's central insight, that 'sovereignty in empire formed as multiple agents positioned themselves to act as subjects of and proxies for imperial powers' is certainly borne out by the jostling for control over expulsions carried out in German Southwest Africa.[15] With the precise lines of demarcation between vessels of sovereign state power within the German colony and the metropole remaining contested, there remained scope for a variety of agents to claim some form of jurisdiction over colonial expulsions or to at the least protest them as manifestations of legally dubious *Ausnahmegesetze* and *Ausnahmemaßnahmen*.

Importantly, the Kaiser's seemingly dictatorial power over the colony emanated solely from his constitutional position as head of state. Unlike within Germany, where his status as Kaiser was a product of his position as king of Prussia, in the colonies the Kaiser's power was not linked to an historical claim to terrestrial sovereignty but rather was a product of his status as the figurative embodiment of the agglomeration of powers and agencies that comprised the assemblage of empire, in the name of which he exercised imperial 'rule'. As such, the colonial sphere was one of the rare sites where the Kaiser held power exclusively in his capacity as the personification of the various states that had federated to form the empire, rather than as the Prussian *primus inter pares*.

Yet even in this site of enhanced sovereignty, the Kaiser's power found some limits. The 1886 Protectorate Law applied a modified version of the 1879 Consular Jurisdiction Act to the protectorates,[16] effectively insinuating the civil law of Germany and the citizenship rights of Prussia into the colonial site. It delineated the extent and limits of the Kaiser's power and the role of colonial officials, including the degree of their subordination to the chancellor.[17] At a more fundamental level, three examples of the clear limits of the Kaiser's exceptional colonial sovereign power can be nominated; first there existed an (at least theoretical) right for those who had been expelled to appeal to the courts and the chancellor, whose decision was final.[18] Secondly, the power to offer citizenship to foreigners and indigenous people in the colony also rested with the chancellor.[19] Thirdly, through the combination of its budgetary power and its moral agency as a bully pulpit, the *Reichstag* was in fact able to temper any tendencies towards flagrant abuses of power in the colonies, albeit generally *ex post facto*. Central to this was the *Reichstag*'s role in passing the colonial budget. This critical power of

[14] Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900*. Cambridge University Press, Cambridge, 2010, pp. 279–99; Lauren Benton, 'Empires of Exception: History, Law, and the problem of Imperial Sovereignty, *Quaderni di Relazioni Internazionali*, 2007, pp. 54–67.

[15] Benton, *A Search for Sovereignty*, pp. 279–80.

[16] 'Gesetz über die Konsulargerichtsbarkeit', *Reichs-Gesetzblatt*, Nr 26, 19 July 1879, pp. 197–206.

[17] §§2–3, Gesetz betreffend der Rechtsverhältnisse der deutschen Schutzgebieten.

[18] Kruckow, *Ausweisungen aus den deutschen Schutzgebieten*, p. 28.

[19] Poser und Gross-Naedlitz, *Die rechtliche Stellung der deutschen Schutzgebiete*, p. 61.

review triggered the so-called Hottentot election of 1907 after Social Democratic and Centre Party deputies sought to curb spending in German Southwest Africa and the Chancellor Bernhard von Bülow was forced to dissolve parliament so as to ensure that colonial funds would be forthcoming.[20] Far from reinforcing the appearance of the Kaiser's sole rule over the colonies, this election illustrated the participatory dimension of colonial rule, amounting to 'a national referendum on the entire German colonial endeavour', which saw *Reichstag* deputies and candidates, civil society organizations, and voters deliberate on the legitimacy of German colonial rule, as Erik Grimmer-Solem has argued.[21] These levers of metropolitan participation and control, alongside others residing in the colony itself, problematized the capacity of the Kaiser to exercise untrammelled rule, rendering German Southwest Africa the kind of 'anomalous legal zone' identified by Benton, which partially shared and was partially excised from the 'legal repertoire' of the metropolitan *Rechtsstaat*.[22] Rather than zones of legal exception in the strong Schmittian sense, where the Kaiser's anomic, metajuridical sovereignty could not be reduced to legally prescribed norms, the German protectorates were carefully codified zones of legal specificity, bespoke legal sites situated squarely within the edifice of the *Rechtsstaat*, albeit courtesy of laws such as the 1886 Protectorate Act and the 1879 Consular Jurisdiction Act which were extraordinary laws in the sense that they carried German law into an extra-constitutional space and were therefore not entirely congruent with the broader corpus of domestic law.

The legal specificity of the colonies, particularly the *Musterkolonie* of German Southwest Africa, saw the theory and practice of expulsions taking a course decidedly different to those of the metropole, even those carried out in the similarly anomalous Alsace-Lorraine. In German Namibia, four different forms of expulsion might be discerned; first, the forcible, indeed genocidal expulsion of the Herero from the German colony in the 1904–1907 war, secondly the expulsion of African prisoners of war, thirdly the juridical casting out of German citizens of mixed parentage (so-called *Mischlinge*) from the colonial body politic *en bloc*, and finally the preparations in German legal discourse for a coming mass expulsion of those Germans deemed unfit to inhabit the German colony.

The Herero War and in particular the genocidal nature of Lothar von Trotha's leadership has been discussed from a range of different perspectives, each offering its own reading of the political and military context within which the war was fought. The dominant approach in the past decade has been to try and ascertain the extent to which the war was an event indicative of a German politico-military *Sonderweg*, or, alternatively, an event characteristic of the shared deeper structure of European settler colonialism more generally.[23] A different approach, however, might be to

[20] G. D. Crothers, *The German Elections of 1907*, New York, 1941.

[21] Erik Grimmer-Solem, 'The Professors' Africa: Economists, the Elections of 1907, and the Legitimation of German Imperialism', *German History* 25(3), 2007, p. 322.

[22] Benton, *A Search for Sovereignty*, p. 6; Schreiber, 'Die rechtliche Stellung' pp. 761–2.

[23] On this question, see for example Jürgen Zimmerer, *Von Windhuk nach Auschwitz? Beiträge zum Verhältnis von Kolonialismus und Holocaust*, Lit Verlag, Berlin, 2011; Jürgen Zimmerer and Joachim Zeller (eds), *Völkermord in Deutsch-Südwestafrika: Der Kolonialkrieg (1904–1908) in Namibia und seine Folgen*, Berlin, CH Links, 2003; Benjamin Madley, 'From Africa to Auschwitz: How German

examine the juridical conditions within which the genocide emerged. To do this, a brief discussion of how the 1904 war intersected with the subject status of the Herero within the colony is necessary.

On the German side, the campaign against the Herero was structured by a division between those wishing to subjugate them and those wishing to annihilate them. The former strategy, most often associated with Theodor Leutwein, sought the subjugation and helotization of an indigenous polity, whereas the other, usually personified by Lothar von Trotha, sought its eradication from 'German' territory. As Trotha explained to Alfred von Schlieffen in October 1904:

> The view on [the war] of the Governor and some of the 'old Africa hands' on one side and I on the other are starkly opposed. The former have long wanted to negotiate and view the Herero as a necessary labour resource for future use by the state. I am of a totally different mind. I believe that the nation as such must be destroyed, or if this is not possible on tactical grounds… expelled from the territory.[24]

The incompatibility between these views was apparent in Leutwein's assessment of Trotha's handling of the war, in which he brushed through the usual discursive cobwebs of the *mission civilisatrice* and offered his blunt assessment of why it had been counterproductive:

> Stripped of all of its ideal and humane embellishments, the end goal of all colonisation is a business transaction. The colonising race does not want to bring the original inhabitants of the to-be colonised land a perhaps expected happiness, they primarily desire their own advantage.… If we test the nature of the transaction we have made with our policy of violence, a picture emerges that is not remotely one of advantage. Against the spending of several hundred million Marks and several thousand German soldiers, we have destroyed the three things of commercial worth in the colony—mining, cattle ranching and the indigenous labour force—the first two entirely, the third is two-thirds destroyed. What is also to be considered is that until now [March 1906] we have sacrificed all of this without being able to re-establish peace.… It is not with blood and iron in the manner of the Tartar Khans that we should treat [indigenous peoples], but rather with an understanding of the historically conditioned particularity of the previous population.[25]

Southwest Africa Incubated Ideas and Methods Adopted and Developed by the Nazis in Eastern Europe', *European History Quarterly* 35(3), 2005, pp. 429–64; Isabel Hull, *Absolute Destruction. Military Culture and the Practices of War in Imperial Germany*, New York, Cornell University Press, 2004; Bley, *Namibia Under German Rule*; Pascal Grosse, 'What Does German Colonialism Have to do with National Socialism?' in E. Ames, M. Klotz, and L. Wildenthal (eds), *Germany's Colonial Pasts*, Lincoln, University of Nebraska Press, 2005; Fitzpatrick, 'The Pre-History of the Holocaust? The Sonderweg and Historikerstreit Debates and the Abject Colonial Past', *Central European History*, 41, 2008, pp. 477–503; Stephan Malinowski and Robert Gerwarth, 'Hannah Arendt's Ghosts. Reflections on the Disputable Path from Windhoek to Auschwitz', *Central European History* 42(2), 2009, pp. 279–300; Volker Langbehn and Mohaammed Salama (eds), *German Colonialism: Race, the Holocaust, and Postwar Germany*, Columbia University Press, New York, 2011.

[24] Trotha to Schlieffen, 4 October 1904, BA Berlin R1001/2089 Differenzen zwischen Generalleuntnant v Trotha und Gouverneur Leutwein bezgl. der Aufstande in DSWA im Jahre 1904, pp. 5–6.

[25] Theodor Leutwein, *Elf Jahre in Deutsch-Südwestafrika*, Ernst Siegfried Mittler und Sohn, Berlin, 1907, pp. 541–2.

A clear part of Leutwein's understanding of the colony that he had governed for more than a decade was that it depended upon a servile indigenous workforce.[26] As such, the Herero, like all other '*arbeitsfähig*' aboriginal peoples in the colony, were for Leutwein (as for many other colonial policy makers and commentators)[27] a necessary, subaltern component of colonial society whose labour underpinned the entire colonial project. His conduct of colonial warfare was therefore predicated on the need to subjugate the Herero, definitively ending their rebelliousness, whilst physically preserving and economically harnessing them.[28]

In June 1904 when he assumed military control and declared martial law in the colony it became abundantly clear that Trotha did not agree with this strategy. Trotha brushed aside Leutwein's pragmatic cunctation aimed at an economically advantageous peace, and focused instead on the now-notorious but pan-European strategy of a battle of annihilation (*Vernichtungsschlacht*).[29]

[26] Leutwein, *Elf Jahre in Deutsch-Südwestafrika*, p. 545.

[27] For an example of the classification of indigenous people according to their capacity to be trained for work in the colonial media, see *Deutsche Kolonialzeitung*, 10 August 1895, pp. 252–3. On the training of colonial labour more broadly, see Sebastian Conrad, *Globalisation and the Nation in Imperial Germany*, Cambridge University Press, Cambridge, 2010, pp. 77–143; Andrew Zimmerman, *Alabama in Africa: Booker T Washington, the German Empire and the Globalization of the New South*, Princeton University Press, 2011, pp. 112–72.

[28] Of course, this had not always been Leutwein's view. In 1896, he had explicitly reserved the right to wage colonial warfare in a manner that was not condoned by the Geneva Convention, including by executing all male prisoners capable of bearing arms. See Leutwein to Hohenlohe-Schillingsfürst, 4 July 1896, as cited in George Steinmetz, *The Devil's Handwriting: Precoloniality and the German Colonial State in Qingdao, Samoa and Southwest Africa*, University of Chicago Press, Chicago, 2007, p. 189.

[29] On annihilatory warfare in Germany, see Jehuda Wallach, *The Dogma of the Battle of Annihilation, The Theories of Clausewitz and Schlieffen and Their Impact on the German Conduct of Two World Wars*, Greenwood, London, 1986. See also Hull, *Absolute Destruction*. Far from a German particularity, there existed a broad preference for annihilatory strategies hinging on a single *attaque à outrance* in Western militaries The plan to encircle and then destroy the enemy was entirely 'conventional', with Napoleon attempting it at both Austerlitz and Jena. See J. Boone Bartholomees Jr, 'The Issue of Attrition', *Parameters*, 2010, pp. 6–7. To a young Winston Churchill's delight, it had also been shown to work in colonial settings with great effect by Britain in 1898 at the Battle of Omdurman in the Sudan, where Kitchener lost only forty-eight men in the process of killing 11,000 Sudanese (including the bayoneting of the wounded). See Edward Spiers, 'The Late Victorian Army, 1868–1914', in David G. Chandler (ed.), *The Oxford History of the British Army*, Oxford University Press, Oxford, 2003, pp. 206–9; Winston Churchill, *The River War: An Account of the Reconquest of the Sudan*: Eyre & Spottiswoode, London, 1933. See in particular his judgement that Omdurman represented 'the most signal triumph ever gained by the arms of science over barbarians. Within the space of five hours the strongest and best-armed savage army yet arrayed against a modern European Power had been destroyed and dispersed, with hardly any difficulty, comparatively small risk, and insignificant loss to the victors.' The scorched earth Dutch campaigns in Aceh in 1878 were similarly 'an attempt to annihilate the resistance as quickly as possible'. See Emmanuel Kreike, 'Genocide in the Kampongs? Dutch Nineteenth Century Colonial Warfare in Aceh, Sumatra', *Journal of Genocide Research* 14(3/4), 2012, p. 302. The military history of the United States also reflects a tendency towards the battle of annihilation. See Russell L. Weigley, *The American Way of War: A History of United States Military Strategy and Policy*, Indiana University Press, Bloomington 1973, pp. 128ff. That Brian Linn has recently argued that the war of annihilation in US military history was diluted by the use of attrition tactics might equally be said of the conduct of Trotha's 1904–1905 desert chase. Indeed precious few military planners decide upon a war of attrition as an initial choice. See Brian Linn, 'The American way of War Revisited', *Journal of Military History* 66(2), 2002, pp. 501–33. Weigley himself argues the same is discernible in Napoleon's move from battles of annihilation towards the war of attrition. Russell F. Weigley,

Paradoxically, it was not Trotha's initial strategy of annihilation (*Niederwerfungsstrategie*) that brought about the destruction of the Herero, but rather its antithesis, the strategy of exhaustion (*Ermattungsstrategie*) that followed it. This was a matter of military incompetence rather than planning, as the German General Staff's official account of the 11 August 1904 Battle of Waterberg reveals. Trotha's clear inability to definitively defeat or even contain the Herero was laid bare in the misleadingly entitled chapter, 'The Decisive Battle at Waterberg'.[30] As a result of his failure to annihilate the Herero forces, Trotha opted for a chase through the Omaheke desert in an attempt to force yet another 'decisive' battle. Failing to achieve this as well,[31] he switched to a campaign of attrition characterized by the denial of access to water, ensuring that the Herero would die in the desert of hunger and thirst. In its account the army tried to shift the blame from the military to nature itself; the Herero, it said, were 'a victim of the nature of their own country', as 'the waterless Omaheke ended, what German weapons had begun: the annihilation of the Herero'.[32] In reality, however, Trotha had been forced to experiment with an emerging strand of military strategy best enunciated by Hans Delbrück; where annihilation was impossible, the commander must rely upon a war of attrition.[33]

As part of this new strategy, Trotha moved to draw a line under his annihilatory failures with his decree on 2 October—almost two months after the Battle of Waterberg—that any Herero found returning to settled areas would be shot. The decree is well known, but renewed attention should be paid to its precise wording:

> I, the great general of the German soldiers send this letter to the Herero Nation. The Herero are no longer German subjects. They have murdered and stolen, they have cut off the ears and noses and other body parts of wounded soldiers and now out of

The Age of Battles: The Quest for Decisive Warfare from Breitenfeld to Waterloo, Indiana University Press, Bloomington, 2004. On Cold War applications of annihilatory short war theory, see Earl F. Ziemke, 'Annihilation, Attrition and the Short War', *Parameters* 12(1), 1982, pp. 23–31. For a pithy discusssion of annihilatory tactics in US and French colonial settings, see Gerwarth and Malinowski, 'Hannah Arendt's Ghosts', pp. 286–90.

[30] Kriegsgeschichtliche Abteilung I des Großen Generalstabes, *Die Kämpfe der deutsche Truppen in Südwestafrika*, Ernst Siegfried Mittler, Berlin, 1906, pp. 156–91. See especially the comment on p. 189. 'So endeten die bedeutsamen Kämpfe am Waterberge. Ihr Verlauf war ein ganz anderer, als er von der obersten Führung beabsichtigt worden war. Der Vorstoß der Abteilung Deimling gegen die Station Waterberg verhinderte den für den 12. August erhofften großen Entscheidungskampf, der dem Hererofeldzuge vielleicht ein schnelleres, aber weniger gründliches Ende gebracht haben würde.' The failure was well known inside the colony itself, as newspaper reports at the time illustrate. See for example the *Deutsch-Südwestafrikanische Zeitung*, 31 August 1904 and 21 September 1904. For their part, in the wake of the debacle, the South African newspaper *The Owl* lampooned Trotha for his 'sheer incompetency' in dealing with insurgent Africans which had driven 'the whole of the people of South-West Africa into revolt'. *The Owl*, 18 November 1904 in BA Berlin R1001/2089, pp. 68–71.

[31] Kriegsgeschichtliche Abteilung I des Großen Generalstabes, *Die Kämpfe der deutsche Truppen in Südwestafrika*, pp. 193–9. See especially the comment on p. 195: 'Der Versuch, den Feind erneut zu Kampf zu stellen, hatte keinen Erfolg gehabt.'

[32] Kriegsgeschichtliche Abteilung I des Großen Generalstabes, *Die Kämpfe der deutsche Truppen in Südwestafrika*, p. 207.

[33] On the grudging acceptance of Delbrück's theory in some German military circles, see Robert T. Foley, *German Strategy and the Path to Verdun: Erich Von Falkenhayn and the Development of Attrition, 1870–1916*, Cambridge University Press, Cambridge, 2005, pp. 51–3.

> cowardice will not fight. I say to the people: he who brings a captain as a prisoner to my station will receive a thousand Marks. Whosoever brings me Samuel Maherero will receive five thousand Marks. The Herero nation must however leave the territory. If the nation does not, then I will force them to with the large guns. Within the German borders, every Herero, armed or not, with cattle or without, will be shot. I will no longer accept women or children but will drive them back to the people or shoot at them. These are my words to the Herero nation. The Great General of the Mighty German Emperor.[34]

Glossing over Trotha's previous military failures, the order was a muscular proclamation of how attrition warfare would be conducted, as Schlieffen informed Chancellor Bülow in November 1904.[35] Yet, often ignored is the fact that this decree did not merely threaten radical violence, but also argued in a pseudo-legalistic fashion, that they had been expelled from the colony and that this expulsion of the Herero from their territories was a consequence flowing from the revocation of German subjecthood, ostensibly as a legal consequence of their barbaric military practices. The consequences of Trotha's decree were genocidal, however the wording of the proclamation was that of an order of expulsion (*Ausweisungsbefehl*), which sought to reposition the Herero as external to German legal protection—*vogelfrei*—and therefore 'legitimately' subject to either forceful expulsion or death. As he explained to Schlieffen two days later in his report, if he couldn't annihilate the Herero in battle, then he would expel them.[36] For his part, Leutwein explicitly distanced himself from the expulsion order, suggesting that he should leave and the colony be formally declared a dictatorship under Trotha.[37]

This expulsion order might have conformed to a certain military logic, however, it was a legally (not to say morally) dubious decree. Putting to one side the Herero's own sense that they had never surrendered their sovereign rights to Germany,[38] under the prevailing German citizenship concept of *ius sanguinis*, and the suite of treaty arrangements that were the basis for German colonialism in Southwest Africa,[39] the Herero were never classified as citizens (*Staatsangehörigen*), but rather

[34] BA Berlin, R1001, No. 2089, p. 7. 'Ich, der große General der Deutschen Soldaten sende diesen Brief an das Volk der Herero. Die Herero sind nicht mehr Deutsche Untertanen. Sie haben gemordet und gestohlen, haben verwundeten Soldaten Ohren und Nasen und andere Körperteile abgeschnitten, und wollen jetzt aus Feigheit nicht mehr kämpfen. Ich sage dem Volk: Jeder, der einen der Kapitäne an eine meiner Stationen als Gefangen abliefert, erhält tausend Mark, wer Samuel Maharero bringt, erhält fünftausend Mark. Das Volk der Herero muss jedoch das Land verlassen. Wenn das Volk dies nicht tut, so werde ich es mit dem Groot Rohr dazu zwingen. Innerhalb der Deutschen Grenzen wird jeder Herero mit und ohne Gewehr, mit oder ohne Vieh erschossen, ich nehme keine Weiber oder Kinder mehr auf, treibe sie zu ihrem Volke zurück, oder lasse auf sie schießen. Dies sind meine Worte an das Volk der Herero. Der große General des mächtigen Deutschen Kaisers.'

[35] Schlieffen to Bülow, 23 November 1904 in BA Berlin R1001/2089 Differenzen zwischen Generalleuntnant v Trotha und Gouverneur Leutwein bezgl. der Aufstande in DSWA im Jahre 1904, pp. 3–4.

[36] Trotha to Schlieffen, 4 October 1904, in BA Berlin R1001/2089, pp. 5–6.

[37] BA Berlin R1001/2089, p. 46.

[38] Jeremy Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century*, Praeger, Westport, 2009, pp. 31–7.

[39] For copies of the protection treaties between Germany and African indigenous nations, see anon, *Denkschrift über Eingeborene-Politik und Herero-Aufstand in Deutsch-Südwestafrika*, Ernst Siegfried Mittler & Sohn, Berlin, 1904, pp. 24–41.

as colonial dependents (*Schutzgebietsangehörigen*).[40] In many ways, the 1904 war was an attempt by both the Herero and the Germans to definitively resolve the lingering ambiguity between the Herero's autonomy and subjecthood.[41] Whilst the Herero were bound to Germany by protection treaties which privileged the position of the German Empire in Southwest Africa, they were not German subjects in the way that, for example, Prussians were Prussian subjects and were certainly never citizens. Indeed the only way an African male could become a German citizen was through the permission of the chancellor. Even German jurists agreed that they were at most subject indigenes of the empire, within a German protectorate.[42]

The closest that any legal theorist came to asserting subjecthood on the colonial peoples was Hermann Hesse, who argued that Germany's colonial indigenes were not compatriots ('*Staatsgenossen*') but were subjects, in the sense of being 'subjects of the empire' (*Unterthanen des Reiches*).[43] So too Egon Kruckow viewed the legal status of the Herero as that of 'subjecthood within the empire'; a position which offered some notional claim on protection and recognition in international law, via guarantees provided by the German state. Crucially, this form of subjecthood was only available to those indigenous to a territory that was not part of the *Reich*, but a '*Reichsnebenland*'.[44] Expulsion, to say nothing of genocide, contravened the conditions of this liminal legal status, as Kruckow would argue in 1913:

> An expulsion from the protectorates *in toto* would render indigenous colonial dependents [*Schutzangehörige*], whose only homeland is the protectorate, homeless; a state that contradicts both international law as well as the modern notion of

[40] Stengel, *Die Rechtsverhältnisse der deutschen Schutzgebiete*, p. 61. By 1906, Emil Peters was arguing that the 'traitorous behaviour' of the indigenous leadership had rendered these treaties non-binding upon Germans. Emil Peters, *Emil Peters, Der Begriff sowie die staats- und völkerrechtliche Stellung der Eingeborenen in den deutschen Schutzgebieten nach deutschem Kolonialrechte*, Dieterich'schen Universitäts-Buchdruckerei, Göttingen, 1906, pp. 16, 35, 53–4. Egon Kruckow took the same position in 1913. Kruckow, *Ausweisungen aus den deutschen Schutzgebieten*, pp. 20–1, 37–9.

[41] Edler von Hoffmann, *Verwaltungs- und gerichtsverfassung der deutschen Schutzgebiete*, Göschen'sche Verlagshandlung, Leipzig, 1908, pp. 79–80.

[42] Peters, *Der Begriff sowie die staats- und völkerrechtliche Stellung der Eingeborenen*, pp. 34ff. Karl von Stengel 'Die Zulässigkeit der Ausweisung von Reichsangehörigen und von Ausländern aus den Schutzgebieten', *Zeitschrift für Kolonialpolitik, Kolonialrecht und Kolonialwirtschaft*, 1909, p. 865. Legally, Southwest Africa was neither '*Inland*' nor '*Ausland*', neither 'protectorate' nor 'colony,' but rather a 'dependency'. The term protectorate was eschewed because a protectorate could only be declared by two legally competent states, a status denied by German law to the pre-European rulers of Southwest Africa. According to German law, indigenous leaders were believed to exercise sovereign power over their people but not their land. See Poser und Gross-Naedlitz, *Die rechtliche Stellung der deutschen Schutzgebiete*, pp. 16–26. On the status of Africans' relationship to their lands in German colonial law, see too Schreiber, 'Die rechtliche Stellung', pp. 773–4.

[43] Hermann Hesse, 'Giebt es eine unmittelbare Reichsangehörigkeit? (IV)', *Beiträge zur Kolonialpolitik und Kolonialwirtschaft* (4), 1903, pp. 218–19.

[44] Kruckow, *Ausweisungen aus den deutschen Schutzgebieten*, p. 39. See too Schreiber, 'Die rechtliche Stellung', pp. 765–9; Poser und Gross-Naedlitz, *Die rechtliche Stellung der deutschen Schutzgebiete*, p. 44. This legal formulation would also be used later to describe the Generalgouvernement during World War Two.

citizenship (*Staatsangehörigkeit*), which with regard to the right of abode is identical to that of colonial dependency.[45]

The October *Ausweisungsbefehl* was not the first time that Trotha had made exaggerated legal claims to sanction his actions. En route to Africa, Trotha had invoked Article 68 of the constitution to claim dictatorial power stemming from a declared 'state of war' (*Kriegszustand*), thereby arrogating the legal powers offered by the state of exception.[46] This use of Article 68 (indeed any constitutional provisions) to proclaim a state of war made little sense in this extra-constitutional site. Like all other constitutional provisions, Article 68 (which expressly refers to federal territories—*Bundesgebiete*) did not apply to the *Schutzgebiete*. Even if such a declaration had applied to Southwest Africa, Article 68 was hardly a constitutional means by which a military commander could declare war while on board a ship on his way to a war, given that this reserve power was available only to the Kaiser.

Significantly, Trotha's radical expulsion order, which kept the Herero in the desert to die, along with his argument positing a breach in the conditions of their subjecthood was rejected by the *Rechtsstaat* he represented. As early as mid-March 1904, the Social Democrat August Bebel had protested in the *Reichstag* against Germany's 'bestial' policy of hanging or shooting Herero prisoners of war.[47] Such a stance had shocked the nationalist sentiments of the liberal and conservative parties, however, just a few months later, in the wake of Trotha's later very public refusal to countenance the surrender and return of enemy combatants and their families, it was recognized that a blanket policy of expelling and/or murdering indigenous people was indefensible—in Chancellor Bülow's words, 'inconsistent with the principles of Christianity and humanity'. Furthermore, and undermined the economic basis of the colony which relied on Herero labour. Under pressure from Gottlob Haußleiter of the Rhenish Mission, Governor Leutwein, the Colonial Office and much of the *Reichstag*, particularly the Social Democrats, and in accordance with the constitutional chain of command, Chancellor Bülow formally requested of the Kaiser that he demand that Trotha revoke his expulsion order. Crucially, the Kaiser complied with this request and Trotha was forced to rescind his genocidal expulsion order so as to preserve the Herero as a future labour force.[48]

The colonial genocide in Southwest Africa was initiated by Trotha's application of mainstream European annihilatory military tactics, but was accomplished by the

[45] Kruckow, *Ausweisungen aus den deutschen Schutzgebieten*, pp. 39–40. Kruckow offers the caveat to this provision (which did not apply in the case of the Herero, as they were expelled from the entire colony) but left open the door for future populations to be relocated within the colony, when he commented, 'Bei der Verpflanzung ganzer Stämme, wie sie infolge von Aufständen mehrfach vorgekommen ist, tritt eine Heimatlosigkeit nicht ein, da diesen Stämmen ja eine neue Heimat geboten und geschaffen wird. Eine solche Verpflanzung ist nicht als Ausweisung und daher auch als zulässig anzusehen.'

[46] Zimmerer, *Deutsche Herrschaft über Afrikaner*, p. 37.

[47] *Verhandlungen des Reichstages*, 17 March 1904, pp. 1891–3.

[48] BA Berlin R1001/2089, p. 48.

expulsion strategy encapsulated in his October 1904 expulsion decree that turned the flight of the Herero and their entrapment in the Omaheke desert into a grinding mechanism for 'destroying the nation as such'. This genocidal expulsion strategy was belatedly disowned and rescinded by the pillars of the German *Rechtsstaat*; civil society and missionary organizations, the bureaucracy, the *Reichstag*, the chancellor, and the Kaiser.[49] The genocide itself, was not, however, a necessary consequence of the 1886 Protectorate Act which enabled the Kaiser to delegate his legally mandated dictatorial power over the colonies to a viceregal governor of his choice. This legal power had installed both Leutwein and, briefly, Trotha in Southwest Africa, although crucially Trotha had come initially as a military commander rather than a civil administrator. If, as Schmitt's dictum suggests, sovereignty resides in the capacity to declare the exception to the constitutional rule of law, Trotha never possessed absolute sovereign power in Southwest Africa either as a civic or military leader, as the rejection and reversal of his tactics by the legally designated metropolitan repositories of German sovereign power makes clear. Whilst the 'dictatorial' power delegated to 'men on the spot' from the Kaiser made political or juridical oversight more difficult, it did not extinguish it entirely. Without wishing to in any way minimize the disastrous effects for the Herero of the lag time involved in exercising this oversight, no constitutionally or legally grounded *Ausnahmezustand* which could sanction the genocidal expulsion of the Herero was effected by Trotha in German Southwest Africa, despite his declarations to the contrary, because, first, the Herero lived in a territory that was technically external to the constitutional reach of the *Rechtsstaat* and, secondly, because Trotha's expulsion order, proclaimed on the basis of his abrogation of the subject status of the Herero, was illegal, given that the Herero were imperial adjunct-dependents but not subjects, and thirdly the expulsion order was deemed by the Kaiser, as the ultimate legal custodian of the values of the German *Rechtsstaat* in the colonies, advised by his domestic military and political leadership, as requiring explicit countermanding. Unhappy with Trotha's genocidal expulsions, the German *Rechtsstaat* insisted on an alternative strategy that squared with Leutwein's desire to helotize the Herero; territorial dispossession, a murderous detention regime and thence the forced labour programmes of the post-1904 period.[50]

While the Herero were being forcibly expelled from German territory, another less often remarked upon expulsion took place when 119 African 'prisoners of war' were transported to Togo, ostensibly as punishment for their role in fighting the Germans.[51] Plans for this type of removal had been mooted since at least April 1904, when the Foreign Office was approached regarding the nature of a plan to send indigenous prisoners of war to Cameroon.[52] Against the background of the Herero–Nama campaigns,

[49] Bley, *Namibia under German Rule*, pp. 164–5.

[50] Jan-Bart Gewald, 'The Issue of Forced Labour in the Onjembo: German South West Africa 1904–1908', *Itinerario* 19(1), 1995, pp. 97–104.

[51] On population transfers from the colonies, see too Dominik J. Schaller, '"Ich glaube, dass die nation als solche vernichtet werden muss": Kolonialkrieg und Völkermord in "Deutsch-Südwestafrika" 1904–1907', *Journal of Genocide Research* 6(3), 2004, pp. 410–15; Zimmerer, *Deutsche Herrschaft über Afrikaner*, pp. 49–55; Hull, *Absolute Destruction*, pp. 79–85, 188–93; Steinmetz, *The Devil's Handwriting*, pp. 172–5.

[52] BA Berlin R1001/2090, 'Ueberführung der Kriegsgefangenen aus Deutsch-Südwestafrika in andere Schutzgebiete', p. 4.

numerous plans emerged, including a suggestion that up to 4,000 prisoners of war be sent to German East Africa to work on the railway lines, a measure which, as its author Ludwig Boldt suggested, would simultaneously offer a labour source to that colony while 'cleansing' Southwest Africa of unwanted indigenous elements.[53]

The designation 'prisoners of war' for those affected by the measures was a dubious one, and it soon came to light that these prisoners of war were in fact Witbooi who had been fighting with the Germans against the Herero when word of the Witbooi uprising reached the army. Those serving with the German army were disarmed and expelled from the colony in October 1904, with the laconic report to the Foreign Office on 28 October 1904 that 'the field command has decreed the shipping of Witbooi prisoners to Togo'.[54] The prisoners were held in such poor conditions that by the end of June 1905, fifty-four of them had already died and the governor of Togo was urging that the remainder be sent back to Southwest Africa. This was refused by Hans Tecklenburg and then a day later by Trotha who argued that the expulsions must be seen as 'retribution for the uprising' (in which the prisoners had not taken part) and that the prisoner of war camps in Southwest Africa were overfull, suggesting that the Witbooi be sent to either Cameroon or the Kilimanjaro region of German East Africa instead.[55] After several more moves within Togo and more deaths, the remaining forty-three were eventually allowed to return to Southwest Africa in February 1906, after the arrival of the new governor Friedrich von Lindequist, sparking uproar in the colonial press which opposed their return.[56]

This should not be misconstrued as a softening of the expulsion regime in the colony under Lindequist. By July 1906, Lindequist was recommending that 'the entire tribe of Witboois be expelled to Samoa', which he later specified as consisting of 1,599 Witboois as well as 191 Bethanier Nama. When the Colonial section of the Foreign Office baulked at the magnitude of the request, Lindequist moderated that to the deportation of the leading figures amongst the Witbooi, with the preferred destination now changed to New Guinea. In August 1906, quotes were duly obtained from *Norddeutscher Lloyd* to ship 300 Witbooi to the pinprick Pacific Ocean islands of Saipan and Anatahan, as well as New Guinea. The project eventually foundered on the grounds of expense, after the Norddeutscher Lloyd shipping company quoted the government 130,000 Marks to send 300 Witbooi to either Saipan or Anatahan, or 135,000 Marks to send them to Herbertshöhe, Neu-Pommern.[57]

Another Witbooi deportation project that did occur, however, was Deputy Governor Oskar Hintrager's expulsion of 93 Witbooi (26 men, 40 women, 27 children) to Cameroon, which was chosen in early 1910 because the governor of German East Africa had refused and Southwest Africa had previously accepted 42 'mutineers' from Cameroon.[58] Once again, the condition in which these prisoners arrived in Cameroon was so poor that several deaths occurred and the governor of Cameroon, Theodor Seitz, warned the Colonial Office as early as

[53] BA Berlin R1001/2090, p. 16. [54] BA Berlin R1001/2090, p. 9.
[55] BA Berlin R1001/2090, p. 22–4.
[56] BA Berlin R1001/2090, pp. 58–61. On the press reaction, see *Der Deutsche*, attacking Berlin's 'Humanitätsduselei'. BA Berlin R1001/2090, p. 94.
[57] BA Berlin R1001/2090, pp. 71–100. [58] BA Berlin R1001/2090, pp. 119, 128.

July 1910 that enquiries made by Catholic missionaries into their health would lead to a public scandal.[59] The deaths continued unabated, caused by tuberculosis and malaria. Hintrager nonetheless remained resolute that they should not return to their homes in Southwest Africa, arguing that their health problems were now an issue for the colonial authorities of Cameroon. By May of 1912, the *Rheinische Missions-Gesellschaft* became involved in lobbying for the return of the remaining Witbooi to Southwest Africa on humanitarian grounds, after having seen the shocking report of Anna Wuhrmann of the Basel Mission who had visited the territory.[60] When approached by Colonial Secretary Wilhelm Solf regarding the possibility of repatriating the seriously ill Witbooi prisoners, Deputy Governor Hintrager and the new governor of Southwest Africa (and until recently governor of Cameroon) Theodor Seitz simply refused, arguing that the health problems of the prisoners were now the responsibility of Karl Ebermeier, the new governor of Cameroon.

The issue was finally brought before the *Reichstag* on 7 and 8 March, 1913. The resolution debated requested that the chancellor ensure that 'the Hottentots exiled to Cameroon can return to their homeland, and there be resettled in accordance with their previous customs'.[61] Yet even in this *Reichstag* debate, Colonial Secretary Wilhelm Solf announced to the *Reichstag* that, although the Witbooi had his sympathy, he was unable to force Governor Seitz to change his mind and readmit the exiled prisoners, because it contravened the principle of governmental 'decentralization'.[62] Yet this attention from the metropole did have some measurable effect, with Seitz eventually relenting, albeit reluctantly, advising Solf three months after the *Reichstag* had considered the issue that he had ordered the surviving thirty-seven Witbooi to be returned to Southwest Africa, minus seven agreed-upon 'dangerous criminals'.[63]

Seitz remained undeterred by the *Reichstag*'s opprobrium, and again in August 1913—one month before the Witbooi from Cameroon actually arrived back in Southwest Africa—sought to continue expelling 'criminal' indigenous inhabitants of Southwest Africa to other colonies. In his correspondence with Berlin, Seitz conceded Cameroon was not ideal, given its hostile climate and the misgivings of its governor in the wake of the *Reichstag* debate, however, he hoped that New Guinea might represent a suitable alternative.[64] This attempt to continue the penal transportation of indigenous people was stymied by Eduard Haber, the acting governor of New Guinea in March 1914, who was no keener than Ebermeier in Cameroon to establish a penal colony for Africans. Not only was

[59] BA Berlin R1001/2090, p. 133.

[60] BA Berlin R1001/2090, pp. 133–70. See too Anna Wuhrmann, *Mittheilungen aus der Baseler Mission* 12(2), 1919, pp. 24–5.

[61] BA Berlin R1001/2090, p. 182, *Verhandlungen des Deutschen Reichstages*, 8 March 1913, p. 4424.

[62] Wilhelm Solf, *Verhandlungen des Deutschen Reichstages*, 7 March 1913, p. 4363.

[63] Seitz to Solf, 24 June 1913. BA Berlin R1001/2090, p. 182; BA Berlin R1001/2091 'Ueberführung der Kriegsgefangenen aus Deutsch-Südwestafrika in andere Schutzgebiete, Bd 2', p. 3.

[64] Seitz, 12 August 1913 in BA Berlin, R1001/2091, pp. 11, 17.

German New Guinea climatically inappropriate, Haber argued, but grafting a rebellious African population onto the colony could trigger an open revolt there. Beyond that, a penal colony in New Guinea had been expressly forbidden under the terms of the treaty with the British regarding the colony.[65] Alternatively, Seitz argued, one of the Mariana Islands such as Tinian might serve. This suggestion was rejected by Solf, who reminded the governors in June 1914 that half of Tinian lay within the British zone and, as per international agreement, could not be used as a penal settlement.[66] World War One intervened before the discussion could go any further.

Worth noting is that these African expulsions, alongside the attempt to expel even more indigenous people deemed a security threat from their homelands, occurred concurrently with the shift in legal thinking amongst German jurists that the expulsion of indigenous peoples from the German colony which housed their territory was unlawful.[67] When the ninety-three Witbooi of Southwest Africa were transported to Cameroon, it had already been settled by German jurists that such actions were irreconcilable with domestic and international law. Once again, this hinged on the status of indigenous people as German dependants but not citizens, who were denied the benefits of the *Freizügigkeitsgesetz* both within and beyond their home colony. The reverse side of these restrictive conditions was that their only guaranteed right of abode was the very general right to remain within the colony which encompassed their territory. This meant that whilst they were protected from expulsion from that colony, they were not protected from exile from their territory within that colony. Under this reading, the transportation of the bulk of the Witbooi to the infamous Shark Island was considered a legal internal transfer under German law. The same could not be said of transportation to Togo or Cameroon, much less New Guinea.[68]

This had not always been seen as self-evident. As late as 1909, the German jurist Max Fleischmann had stated that while it was generally the case that indigenous people enjoyed a right of abode within the German colony that housed their ancestral territory, there were permissible exceptions to this practice. In effect, Fleischmann left substantial room for the kind of drastic, inter-colonial expulsion measures sought by colonial governors, arguing that:

> the native has only his tribal lands as homeland. To secure this for him lies within the nature of the establishment of protectoral rule over the colony. Even with regard to these inhabitants, however, the colonial state cannot do without the most extreme measure; namely to remove them entirely. The state must merely ensure not to abandon them and must provide them with a new homeland; *in extremis* transplant them to another colony.[69]

This hazy legal frontier was quickly revised, however, with Karl von Stengel arguing in favour of incarceration over expulsions in the same year, declaring that

[65] Haber, 13 March 1914, BA Berlin, R1001/2091, p. 20.
[66] BA Berlin, R1001/2091, pp. 11–27.
[67] Kruckow, *Ausweisungen aus den deutschen Schutzgebieten*, p. 39.
[68] On the fate of the Witbooi on Shark Island, see Steinmetz, *The Devil's Handwriting*, p. 173.
[69] Fleischmann, 'Die Ausweisung von Reichsangehörigen', p. 652.

'although the expulsion of non-naturalised natives is not viable, the use of other restrictions of freedom such as internment against such natives is entirely permissible'.[70] Simon Reimer argued similarly in 1911 that only internment within the protectorate and not outright expulsion from the colony was permissible:

> Under the current legal arrangements, the natives have no right to reside in a particular place or a particular region or a particular tribal territory. The expulsion of a native from his place of birth or from a particular region is entirely permissible, as is the prohibition upon entering a particular area. . . . The native, however, is protected by his 'right of residence in general' from the furthest consequences of being prohibited from every region of the colony and thereby from being expelled from the colony itself. It is the duty of the governor to identify in individual cases of those who have been removed from a region a place in the colony where they may reside.[71]

Reminiscent of the legal stipulations regulating the enforced internal displacement of German Jesuits and Social Democrats within Germany in the 1870s, this argument in favour of quarantining indigenous peoples deemed a threat to the colonial state away from their traditional lands but within the colony which housed them was reiterated by Egon Kruckow in 1913, when he argued that indigenous people might not be expelled from the entire colony due to their general right of abode within the colony. Crucially, Kruckow argued that not only individuals or groups of indigenes might be relocated to another region within the colony as a form of internment, but entire nations could be moved and interned should it be deemed necessary for security reasons,[72] a legal argument which quite possibly had its origins in the actual post-1904 internment of the Herero in German Southwest Africa.[73]

Notwithstanding the weight of legal opinion at the time which explicitly ruled out inter-colonial expulsions of Germany's indigenous colonial subjects at the theoretical level, the transportation of indigenous Africans by various colonial governors in Southwest Africa and elsewhere to other colonies was not strictly speaking illegal in the sense of being overtly proscribed by law, with the scholarly opinion to the contrary remaining untested by courts. With no explicit laws prohibiting colonial governors from making use of their discretionary powers to effect mass deportations of Africans from their homelands (or not as they saw fit), these expulsion actions sat at the outer edge of the enhanced powers delegated by the Kaiser to his colonial governors. Mass deportations of Africans may have been decried loudly and in some instances effectively by the *Reichstag*, the Colonial Secretary, German jurists, and European missionary societies, just as they were endorsed by the white population of the African colony. Legally, however, unless instructed by the Kaiser to the contrary, there were no grounds which would permit Berlin to

[70] Stengel, 'Die Zulässigkeit der Ausweisung', p. 870.

[71] Reimer, *Die Freizügigkeit in den deutschen Schutzgebieten*, p. 44, cited verbatim in Franz Josef Sassen, 'Das Recht der Freizügikeit in den deutschen Kolonien', *Zeitschrift für Kolonialpolitik, Kolonialrecht und Kolonialwirtschaft*, 1911, p. 396.

[72] Kruckow, *Ausweisungen aus den deutschen Schutzgebieten*, pp. 38–44.

[73] Zimmerer, *Deusche Herrschaft über Afrikaner*, pp. 42–7.

override the 'principle of decentralization' which offered the governor extensive latitude in handling colonial security, law, and order. Tellingly, there was no automatic connection between the theoretical discourse of jurists which supported the rights of indigenous people to remain in their region (if not their actual territory) and the actual decision making of governors in the colonies.[74] In the event, it was not the legal experts of the *Kaiserreich* who ruled out further expulsions of indigenous peoples, but rather the absolute limits imposed by the prohibitive costs of transportation and Germany's treaty obligations to other colonial powers.

Beyond the genocidal expulsion of the Herero and the inter-colonial expulsion of indigenes, other forms of expulsion were also practised in Southwest Africa. One of the juridical rather than physical forms of expulsion was the alteration of the legal status of Afro-Germans; that is those of mixed African–German parentage who had qualified for German citizenship prior to 1904, but who lost this status in the wake of the 1904 uprising.[75] The effect of this legal change was to legally cast out some colonial subjects, effectively changing their status from German citizens to native subjects.

The background to this change in status lies in the antinomian history of colonial sexuality and human relations. Through 'interracial' relationships, 'miscegenation', and ultimately the offspring these encounters engendered, the strict distinction between white colonizers (including not only German settlers but Boer and British settlers as well) and black Africans was confounded by the coming into existence of progeny of mixed 'racial heritage'—*Mischlinge*.[76] With *Mischlinge*, a new social and, it was later claimed, racial stratum emerged which could not be easily accommodated by the rigid binary between the colony's white European colonizers and black indigenous colonized. Alarmingly for colonial authorities, the hitherto racially and economically demarcated colonial hierarchy was further exacerbated by the downward social mobility of some European settlers, who were perceived as joining this new liminal social stratum. Through mixed marriages, *de facto* partnerships, and less formal interracial sexual encounters, neat colonial social hierarchies were eroded, something noted in the work of colonial experts, tussling with the question of *Mischlinge*, viewed as 'colonial riddles made flesh'.[77]

Prior to 1904, mixed marriages and the Afro-German citizen children they spawned had not been considered a threat that required active state intervention. Rather, social and political attitudes towards mixed marriages and *Mischlinge* were initially characterized by a tension between socio-racial chauvinism on the one hand and a pragmatic understanding of the colonial situation and the

[74] It is worth noting that in the British colony of New South Wales, governors were similarly seen as vice-regal 'constitutional sovereigns', with early governors 'practically the absolute ruler' of the colony. Bruce Knox, 'Governors', in G. Davison, J. Hirst, and S. McIntyre, *The Oxford Companion to Australian History*, Oxford University Press, Melbourne, 2001, p. 291.

[75] See Fitzpatrick, 'The Threat of Woolly-Haired Grandchildren', pp. 356–68.

[76] Hereafter it is assumed as self-evident that the term 'race' is a pseudo-scientific designation peculiar to a particular historic epoch. Accordingly the quotation marks will be dropped.

[77] See for example Gentz, 'Die rechtliche Stellung der Bastards in Deutsch-Südwestafrika', *Beiträge zur Kolonialpolitik und Kolonialwirtschaft* (4), 1903, pp. 90–2. Note particularly his

potential benefits of 'racial mixing' on the other. It was understood if not always socially accepted that it was legally possible that 'indigenous people might be naturalised if they have reached a certain higher cultural level'.[78] As is well known, in 1887, the prominent Rhenish missionary organization lobbied to ensure that interracial marriages were recognized in law, in the hope of stamping out concubinage,[79] a measure approved by the Reichskommissar Heinrich Göring and the Colonial Office in Berlin, which confirmed the status of mixed marriages as lawful in 1899.[80] Thereafter, until 1905, citizenship was carried by the *paterfamilias* and mixed marriages conferred full German citizenship to the children and wife of a German male married to an indigenous woman.[81] Although Governor Leutwein used his powers to offer some passive resistance to directives from Berlin that he expedite the recognition of mixed marriages,[82] during the early colonial period, the European population of German Southwest Africa 'wanted to keep the possibility of a marriage with an African woman open'.[83] Personal sentiment aside, familial arrangements between Germans and *Mischlinge* prior to 1904 were not merely convenient, they were also a potential source of prosperity and social mobility for white Germans in the colony.[84]

So too *Mischlinge* conceived outside of wedlock were seen as potentially useful adjuncts to the political economy of the colony prior to 1904. By translating European rule for indigenous people, through their work as exemplary manual labourers and as potential Christian proselytizers amongst indigenous

judgement that the question is not one of *Rassenzugehörigkeit* but *Klassenzugehörigkeit*. For the characterization of *Mischlinge* as a 'fleischgewordenes Kolonialrätsel' see J. Friedrich, 'Ueber Mischehen zwischen Weißen und Farbigen in den deutschen Schutzgebieten', *Politische-Anthropologische Revue* (11), 1912/13, p. 434. On this alarm regarding the sinking of white settlers into a lower socio-racial milieu, see Felix Axter, 'Die Angst vor dem Verkaffern—Politiken der Reinigung im deutschen Kolonialismus', *Werkstattgeschichte* 39, 2005, pp. 39–40; Katharina Walgenbach, 'Rassenpolitik und Geschlecht in Deutsch-Südwestafrika (1907–1914)', in F. Becker (ed.), *Rassenmischehen—Mischlinge—Rassentrennung. Zur Politik der Rasse im deutschen Kolonialreich*, Stuttgart, Franz Steiner 2004, p. 173. See particularly her statement that, 'race appears . . . no longer to be a primordial, given attribute. One could gain or lose race. The state of being white ('*Weißsein*') was not merely a question of pigmentation, but also of identification, conviction and conduct.'

[78] Schreiber, 'Die rechtliche Stellung der Bewohner der deutschen Schutzgebiete', p. 764. On religion, see Peters, *Der Begriff sowie die staats- und völkerrechtliche Stellung der Eingeborenen*, pp. 32–3; J. Friedrich, 'Ueber Mischehen zwischen Weißen und Farbigen', pp. 436–7.

[79] C. G. Büttner to Bismarck, 7 May 1887 in BA Berlin, R1001/5423 Mischehen und Mischlinge, p. 3.

[80] Zimmerer, *Deutsche Herrschaft über Afrikaner*, pp. 94–7.

[81] Peters, *Der Begriff sowie die staats- und völkerrechtliche Stellung der Eingeborenen*, pp. 7, 28. See too Daniel J. Walther, 'Gender Construction and Settler Colonialism in German Southwest Africa, 1894–1914', *The Historian* 66, 2004, p. 10.

[82] Lora Wildenthal, *German Women for Empire, 1884–1945*, Duke University Press, London, 2001, pp. 88–92.

[83] Zimmerer, *Deutsche Herrschaft über Afrikaner*, p. 97; Frank Becker too has noted that prior to 1904, 'for many German settlers, the daughters of Reheboth Bastards were desired as candidates for marriage'. Frank Becker, 'Zum Status der Mischlinge in der kolonialen Gesellschaft Deutsch-Südwestafrikas', in F. Becker (ed.), *Rassenmischehen—Mischlinge—Rassentrennung. Zur Politik der Rasse im deutschen Kolonialreich*, Franz Steiner, Stuttgart, p. 185.

[84] Daniel J. Walther cites Lindequist's 1905 characterization of the earlier reality that 'many of the young men are inclined to enter into a conjugal relationship with native, namely Bastard girls, in the absence of white girls. They are moved simply through the circumstance that the Bastard

populations, they were thought to simplify the process of 'civilizing' Africans.[85] Some saw them as potential recruits for a colonial army, where they could be both carefully supervised and useful in upholding German rule.[86] To this end, both Catholic and Protestant missions educated *Mischlinge* outside German families in German language and manual trades to ensure their future utility to the colony.[87] Courtesy of their mission education and their concomitant knowledge of German, a socio-economic space was envisaged for *Mischlinge* prior to 1904 in jobs perceived to be 'less attractive to whites and which overextended Africans'.[88]

However, the 1904 uprising radically altered the conceptualization of *Mischlinge* in German Southwest Africa.[89] Thereafter, *Mischlinge* were no longer viewed as being usefully half white, but rather as dangerously half black. Discussions of race during and after the war now supposed that the whiteness that had been bequeathed them had improved *Mischlinge* intellectually, however their blackness meant that this heightened intelligence would make them far more dangerous as a source of 'treason'.[90] The colonial administration of Southwest Africa felt that, in the final analysis, mixed-race children would come to side with Africans in any colonial rebellion.[91] For this reason, steps were undertaken to legally reposition all *Mischlinge*, including those within German families, depriving them of their citizenship.

After the 1904 uprising, colony specific laws replaced the patriarchal principle of citizenship with state control over the definition of what constituted a German family and, as such, what constituted a German.[92] Although clearly not all *Mischlinge* were 'coloured Germans' in legal terms, as various participants in the *Reichstag* debate over mixed marriages pointed out,[93] it was precisely these 'coloured Germans' in German colonial families that were the chosen vehicle for attempts to arrest the 'bastardization' of the German Empire. By 1905 racially mixed marriages were expressly prohibited in German Southwest Africa,[94] with German East Africa and German Samoa following suit

girls quite often bring a herd of livestock, an oxen wagon, and not seldom a farm into the marriage.' Daniel J. Walther, *Creating Germans Abroad: Cultural Policies and Settler Identities in Namibia*, Ohio University Press, 2002, p. 35.

[85] Zimmerer, *Deutsche Herrschaft über Afrikaner*, p. 95.

[86] Frank Becker, 'Die "Bastardheime" der Mission. Zum Status der Mischlinge in der kolonialen Gesellschaft Deutsch-Südwestafrikas', in F. Becker (ed.), *Rassenmischehen—Mischlinge—Rassentrennung. Zur Politik der Rasse im deutschen Kolonialreich*, Steiner, Stuttgart, 2004, pp. 189–90; Frank Becker, 'Soldatenkinder und Rassenpolitik. Die Folgen des Kolonialkriegs für die "Mischlinge" in Deutsch-Südwestafrika (1904–1913)', *Militärgeschichtliche Zeitschrift* 63(1), 2004, pp. 54–7.

[87] Becker, 'Soldatenkinder und Rassenpolitik', pp. 54–7.

[88] Becker, 'Soldatenkinder und Rassenpolitik', pp. 53–4.

[89] Walther, *Creating Germans Abroad*, p. 34; Becker, 'Die "Bastardheime" der Mission', p. 218.

[90] Becker, 'Soldatenkinder und Rassenpolitik', p. 61.

[91] Walther, *Creating Germans Abroad*, p. 35.

[92] BA Berlin, R1001/5423 Mischehen und Mischlinge, pp. 67ff.

[93] Cornelia Essner, 'Zwischen Vernunft und Gefühl: Die Reichstagsdebatten von 1912 um koloniale "Rassenmischehe" und "Sexualität" ', *Zeitschrift für Geschichtswissenschaft* 45(6), 1997, p. 510.

[94] Becker, 'Soldatenkinder und Rassenpolitik', p. 58; Walther, *Creating Germans Abroad*, p. 39.

in 1906 and 1912 respectively.[95] The legal sanctions against mixed families in Southwest Africa were further strengthened in 1907 when earlier non-registered mixed marriages were annulled and the children of these now illegal unions were declared to be indigenous, not German.[96] Those *Mischlinge* who had hitherto been considered German lost their German citizenship and their right to inherit land. These legislative moves were supported by legal test cases in 1907 and 1909.[97] In 1909, the *Landesrat* in Southwest Africa even moved to outlaw interracial sexual contact 'during the period of fertility' more generally.[98] One legal scholar even called for interracial concubinage to be enforced by the threat of castration.[99]

In this way, some German families were legally and socially amputated from the body politic and expelled from the German social and civic world (*Deutschtum*) and its concomitant privileges. One such family was that of Martin Wade, who had married in 1887 and had three children, but who suddenly found in September 1905 that his marriage was not legally recognized.[100] Similarly, Hermann Guthke discovered that his young son Walther was no longer counted as a German citizen, because after 23 September 1905, no mixed marriages would be registered.[101] So too, upon the death of Rudolf Brühshaver, the Prussian father of two mixed-raced children born within wedlock, the Colonial Office carefully scrutinized the 'Germanness' of his two registered children Emma and Hermann with a view to stripping them of their citizenship. Their Germanness was calculated by whether they had been raised as Germans and had lived in Germany.[102] Even highly educated Afro-Germans, however, found that they were not exempt from the new expatriation measures, such as in the case of Ludwig Baumann, who held a master's degree in engineering and was considered to be '7/8 white' but nonetheless found himself suddenly declared to be a native in the midst of a trial.[103]

Despite the opposition of the Rhenish Mission, in the radical environment of the post-1904 colonial world these measures were imposed 'with the full support of the settlers'.[104] It was similarly endorsed by the German Colonial

[95] Schulte-Althoff, 'Rassenmischung im kolonialen System: zur deutschen Kolonialpolitik im letzten Jahrzehnt vor dem Ersten Weltkrieg', *Historisches Jahrbuch* 105, 1985, pp. 52–94, p. 61.

[96] Bley, *Namibia Under German Rule*, p. 212; Zimmerer, *Deutsche Herrschaft über Afrikaner*, pp. 103–4; Becker, 'Soldatenkinder und Rassenpolitik', pp. 58–9.

[97] Zimmerer, 'Von Windhuk nach Warschau', p. 103.

[98] Essner, 'Zwischen Vernunft und Gefühl', p. 510.

[99] The suggestion was ridiculed in V. Fuchs, 'Nochmals zur Frage der Mischehen in den deutschen Schutzgebieten', *Koloniale Rundschau*, 1909, p. 497. It was nonetheless revived by J. Friedrich in 'Ueber Mischehen zwischen Weißen und Farbigen in den deutschen Schutzgebieten', *Politische-Anthropologische Revue* (11), 1912/13, p. 435.

[100] BA Berlin, R1001/5423 Mischehen und Mischlinge, p. 98.

[101] BA Berlin, R1001/5423 Mischehen und Mischlinge, p. 104.

[102] BA Berlin, R1001/5423 Mischehen und Mischlinge, p. 109ff.

[103] *Deutsch-Südwestafrikanische Zeitung*, 18 March 1913, BA Berlin, R1001/5424 Mischehen und Mischlinge in rechtlicher Beziehung Deutsch-Südwestafrikas, pp. 30–2. See too R1001/5418 Mischehen und Mischlinge, p. 307.

[104] Bley, *Namibia Under German Rule*, p. 213; Becker, 'Soldatenkinder und Rassenpolitik', p. 59.

Society.[105] Although economic issues pertaining to the maintenance of land in white hands via inheritance were also raised,[106] the primary sensibility in the post Herero-Nama War era was that pithily expressed by colonial commissar Paul Rohrbach; that *Mischlinge*, by dint of their liminality, were politically unreliable, a 'highly dangerous' political element in a post-war colonial setting.[107] To combat this perceived danger, racial criteria for citizenship disenfranchised and denationalizsed coloured colonial Germans.

By regulating family life and citizenship and reinforcing the colonial racial dichotomy, an attempt was made to reconfirm the alterity of all non-whites, so as to preserve the fundaments of European rule. As Steinmetz has argued, this stability was necessary, it seemed, to 'make it impossible for the colonized to move within . . . [an] ambiguous cultural space, to oscillate uncontrollably between European and non-European signifying systems'.[108] The sculptor Fritz Behn made clear what was at stake when he remarked, 'if we want to give up our ruling position, should we wish to delight the blacks with equalising laws—which given the differences in racial conditions is utopian—then we can give up our colonies. Either we are masters or not'. Empire under his reading was not a question of 'human rights, equality, freedom and morality; when we colonise we do it not for the shining light in the eyes of the blacks, but because we must expand'. If this meant the denial of the equality of Africans and therefore a denial of the right of mixed race couples to marry, then this was entirely justified.[109]

By 1909, legal opinion on the broader status of *Mischehen* and their resulting offspring under not just colonial regulation but German law was divided, with one commentator emboldened to declare in 1909 that 'all mixed marriages in Germany and in the German colonies are invalid, illegal and are in fact concubinage. Their offspring are to be treated as natives.'[110] On the other hand, others argued that given mixed marriages were entirely permissible in Germany in the colonies too 'all governmental directives which forbid mixed marriages and all punitive measures against missions which accept mixed marriages are invalid'.[111] At the 1910 Colonial Congress, the question was debated after Max Fleischmann's lecture on the issue, where he argued on the one hand that mixed race marriages were undesirable, but that such marriages that existed were to be recognized and the offspring resulting from them recognized as citizens, albeit with restrictions on their political and hereditary rights. Fleischmann also pleaded for an international covenant on mixed race marriages between

[105] BA Berlin, R1001/5417, p. 50.
[106] Schulte-Althoff, 'Rassenmischung im kolonialen System', p. 66.
[107] Schulte-Althoff,'Rassenmischung im kolonialen System', p. 86.
[108] Steinmetz, "'The Devil's Handwriting"', p. 45.
[109] Fritz Behn, 'Zur Frage der Mischehen', *Süddeutsche Monatsshefte* 10(1), 1912/1913, pp. 155–6.
[110] J. Friedrich, 'Die rechtliche Berurteilung der Mischehen nach deutschem Kolonialrecht' *Koloniale Rundschau*, 1909, p. 368. For a retrospective discussion of the debate, see Friedrich, 'Ueber Mischehen zwischen Weißen und Farbigen', pp. 432–3.
[111] Cited by Theodor Gentrup in his summary of the debate in 'Die Rassenmischehen in den deutschen Kolonien und das kanonische Recht', *Archiv für katholisches Kirchenrecht* 94 (4), 1914, p. 7.

Europe's empires.[112] This call to internationalize the issue also saw the statutes of other imperial states such as Britain, France, and the Netherlands carefully studied by others, with one scholar holding out the hope of an international agreement declaring all mixed marriages throughout the world invalid.[113]

If colonial governors were able to disenfranchise and juridically cast out coloured Germans within their colonies, their locally authoritative decisions held no legal consequences for the same people in Germany itself. Attempts to introduce legislation which would denaturalize Germans of mixed race in Germany were unsuccessful, despite the personal intervention of the liberal ex-governor of German Samoa, Wilhelm Solf,[114] who in his role as Colonial Secretary attempted to induce the *Reichstag* in 1912 to legislate to ensure that mixed marriages were illegal under not just colonial, but German law. He did so by appealing to the example of the racial muddle of the United States where an African 'can even become president, if he is not lynched first', and an archetypal vision of the normative, white German family and by warning of its imminent corruption through miscegenation:

> Gentlemen, I ask you urgently to be led by your instincts. . . . You are sending your sons to the colonies. Would you like them to bring you black daughters in law into the family? Would you like them to lay woolly-haired grandchildren in the cradle for you? . . . Do you want white women to return with Hereros, Hottentots and Bastards as husbands? No, gentlemen, let these facts work on you, on your instincts as Germans, as whites! The entire German nation will thank you if you have no other consideration than this: we are German, we are white and we want to remain white.[115]

Yet, despite a vociferous liberal and conservative press campaign against racial mixing,[116] and the pre-existence of laws prohibiting mixed-marriages in all of Germany's main colonies by 1912, the *Reichstag*, led by Catholic and Socialist opposition, refused to introduce the colonial practice of denaturalizing *Mischlinge*

[112] Max Fleischmann, 'Die Mischehen in den deutschen Schutzgebieten vom Rechtsstandpunkte', *Verhandlungen des deutschen Kolonialkongresses, 1910*, Dietrich Reimer, Berlin, 1910, pp. 548–71.

[113] BA Berlin, R1000/5420, Friedrich, 'Ueber Mischehen zwischen Weißen und Farbigen', p. 435. See too Georg Braun, *Zur Frage der Rechtsgültigkeit der Mischehen in den deutschen Schutzgebieten*, Julius Abel, Greifswald, 1912, pp. 46–8; Karl Neumeyer, 'Privatrechtliche Mischbeziehungen nach deutschem Kolonialrecht', *Zeitschrift für Völkerrecht und Bundesstaatsrecht* (6), 1913, pp. 131–9.

[114] Roland Samulski, 'Die "Sünde" im Auge des Betrachters—Rassenmischung und deutsche Rassenpolitik im Schutzgebiet Samoa 1900 bis 1914', in F. Becker (ed.), *Rassenmischehen—Mischlinge—Rassentrennung*, pp. 346–50; Birthe Kundrus, 'Das Reichskolonialamt zwischen nationalem Geltungsbewusstsein und Weltbürgertum: Die Statssekretäre Friedrich von Lindequist und Wilhelm Solf', in U. van der Heyden and J. Zeller (eds), *'Macht und Anteil an der Weltherrschaft': Berlin und der deutsche Kolonialismus*, Münster, Unrast, 2005, p. 18.

[115] Solf in *Verhandlungen des deutschen Reichstags* Vol 285, 2 May 1912, pp. 1648–9. See too Kundrus, 'Das Reichskolonialamt zwischen nationalem Geltungsbewusstsein und Weltbürgertum', p. 18; Essner, 'Zwischen Vernunft und Gefühl', p. 509. On Solf's close study of the example of the United States, see Jens-Uwe Guettel, *German Expansionism, Imperial Liberalism and the United States*, Cambridge University Press, Cambridge, 2012, pp. 130–60.

[116] For the press campaign, see the collection of clippings in BA Berlin, R1001/5417 Mischehen und Mischlinge, pp. 98–103, 194–5.

to the colonial metropole.[117] The principle of excising citizens from the body politic on the grounds of the racial composition of their family was never endorsed by the *Reichstag* prior to World War One, despite the creeping appeal of biological racism as a form of political argument.[118] Without an immediate racial dimension to social conflict in Germany, the juridical expulsion of *Mischlinge* from the body politic in the colonial periphery did not translate into the expulsion of racially mixed Germans from the ranks of the nation's citizenry.

The various forms of expulsion enacted upon the Herero, African prisoners of war, and Afro-German *Mischlinge* stemmed from the demonstrated military threat posed by some and the more intangible political and demographic threat posed by others. Yet numerous other examples of expulsions from Southwest Africa occurred between the 1890s and 1914. Not only Africans and Afro-Germans, but German colonists too were liable to expulsion from the colony.[119] Unlike formal penal transportation, but similar to the situation in Alsace-Lorraine, the expulsions of German citizens were not a form of punishment and did not constitute part of a sentence,[120] but rather were a security measure triggered by the colonial authorities' (in particular the governor's) decision that a German, irrespective of whether they had been convicted and sentenced for a crime or not, represented a threat, either to the security of the colony or to the colonial endeavour itself, and required removal. Critical in adjudicating the application of an expulsion order was the requirement to preserve the prestige of the ruling Germans in front of the colonized.[121] It was, that is, the fragility and the volatility of the colony's socio-racial frontier that necessitated a regime which would regulate the personal conduct of Europeans for fear of its effects on Africans.

The case of Victor von Alten with which this chapter opened, expelled from Southwest Africa because of homosexual sex acts with African men deemed to have 'damaged the colonizing endeavour' was perhaps the most notorious colonial deportation in the German public imagination.[122] In legal terms, however, it represented a test case which probed the general validity of the *Freizügigkeitsgesetz* in the colonies. Asserting that the deportation contravened his right to freedom of movement, Alten sued the German government in December 1909 for 2,600 Marks plus 4 per cent annual interest, arguing that in expelling him, the governor had presumed to act in a way that was only open to the Kaiser, who was the

[117] See in particular *Verhandlungen des deutschen Reichstags*, Vol 285, 2, 7, and 8 May 1912, pp. 1647–52, 1724–37, 1739–47.

[118] BA Berlin, R1001/5417 Mischehen und Mischlinge, R1001/5418 Mischehen und Mischlinge. Not surprisingly, the discussion was more overtly racialized in the specialist anthropological literature. See for example Friedrich, 'Ueber Mischehen zwischen Weißen und Farbigen', pp. 437–8.

[119] See the numerous examples in BA Berlin, R1001/7547 'Ausweisungen aus den deutschen Schutzgebieten. Allgemeines'. See too the numerous cases discussed in BA Berlin, R1001/1918 'Ausweisungen aus Südwestafrika'.

[120] Max Fleischmann, 'Nochmals die Ausweisung aus den Schutzgebieten', *Koloniale Rundschau*, 1910, p. 243; Kruckow, *Ausweisungen aus den deutschen Schutzgebieten*, pp. 23, 72.

[121] Fleischmann, 'Nochmals die Ausweisung aus den Schutzgebieten', p. 243.

[122] BA Berlin R100/7547 Ausweisungen aus den deutschen Schutzgebieten. Allgemeines, pp. 28–30, 66–8. It was also used as the introductory case for Simon Reimer's 1911, *Die Freizügigkeit in den deutschen Schutzgebieten*, p. 1.

sole source of extra-judicial sovereign power in the colonies. The judgment, however, was clear, emphatically reinstating the legal differences between colony and metropole by ruling that the *Freizügigkeitsgesetz*, as well as the law which enabled those unlawfully punished by the state to seek compensation were invalid in the colonial sphere.[123] In this way, the door was opened to a new category of expellees; undesirable colonists.

As Daniel J. Walther has made clear, Alten was far from the only European expelled from Southwest Africa.[124] The year of 1910 saw the expulsion of an incorrigible 13-year-old, August Wilhelm Heinrich Martin, who, it was claimed, stole, swore, and lived with Africans. Martin was sent to a reform school in his father's home city of Hamburg.[125] More seriously, on 4h June 1912, Heinrich Odelwald was gaoled and then deported after raping an African child.[126] Otto Walser only narrowly escaped being expelled for homosexual sex acts in the same year—most likely because there was no suggestion that they involved indigenous men.[127] Others who had, however, engaged in interracial homosexual sex were expelled, such as Walter Sobtzick in June of 1913,[128] Walter Vogel in August 1913,[129] and Maximilian von Rudno-Rudzinski in May 1914.[130] Kurt Berner was also recommended for expulsion due to his violent alcohol-fuelled rages which saw him shoot one of his African workers.[131] Others accused of lesser transgressions, such as theft or selling alcohol to indigenous people, however, had court recommendations for their expulsion overturned by the governor.[132]

The legal reasoning surrounding these expulsions was complex. Article 3 of the *Reichsverfassung* was very clear about the rights granted to German citizens with regard to both security of abode and the maintenance of citizen rights:

> For all of Germany, there is a collective nationality (*Indigenat*), with the effect that that nationals (subjects, citizens) of one of the federal states are to be treated as a citizen in all others, and therefore to be treated equally in any state regarding permanent residency, engaging in business, public service, the acquisition of real estate, the extension of the political rights of the citizen, and the enjoyment of all citizen rights under the conditions that citizens of that state enjoy; so too with regard to the pursuit of legal claims and the protection of the law they are to be treated equally.

[123] BA Berlin R100/7547 Ausweisungen aus den deutschen Schutzgebieten. Allgemeines, pp. 66–8. The pertinent compensation law was §6 des Preußischen Gesetzes vom 11 Mai 1842, *Gesetzsammlung für die königlichen preußischen Staaten 1842*, p. 193.

[124] Walther, *Creating Germans Abroad*, pp. 36–9. Elsewhere, Walther studies the cases of men expelled from German colonies in New Guinea and Cameroon as a result of their prosecution for homosexual sex with indigenous men. Walther, 'Racializing Sex, pp. 11–24.

[125] BA Berlin, R1001/1918 Ausweisungen aus Südwestafrika, pp. 62ff.

[126] BA Berlin R151F/82550 Polizeiwesen, Bd VI, p. 90.

[127] BA Berlin R151F/82550 Polizeiwesen, Bd VI, p. 119.

[128] BA Berlin R151F/82550 Polizeiwesen, Bd VI, p. 227.

[129] BA Berlin R151F/82550 Polizeiwesen, Bd VII, p. 3.

[130] BA Berlin R151F/82550 Polizeiwesen, Bd VII, p. 114.

[131] BA Berlin R151F/82550 Polizeiwesen, Bd VII, p. 57.

[132] See for example the cases of Lauterbach in July 1906 and Bartenwerfer in January 1913. BA Berlin, R1001/7547 'Ausweisungen aus den deutschen Schutzgebieten. Allgemeines', pp. 22ff and BA Berlin R151F/82550 Polizeiwesen, Bd VI, p. 168.

> No German may be limited in the exercising of this legal competency by their state government or the government of another federal state.[133]

The language of Article 3 of the constitution self-consciously mirrored that of 1 November 1867 *Freizügigkeitsgesetz*. This 1867 law, carried over from the *Norddeutscher Bund* to the Reich, specified in its first paragraph that citizens of any of the states had the right to travel between and reside in any of the other states without government interference. In case this was not clear enough, Article 12 expressly denied states the right to expel the citizens of other German states.[134]

As almost all legal scholars agreed, for German citizens in the colonies (as for the citizens of other imperial powers such as the Netherlands in their colonies), these constitutional rights did not apply.[135] In the early years of Germany's state-directed colonialism, advice was sought to establish the practices of other empires with regard to the expulsion of citizens from the colonies. In particular, Germany's ambassador to Britain, Paul von Hatzfeldt, was asked to find out in November 1889 whether Britain or France expelled their own citizens from their colonies or protectorates.[136] Hatzfeldt offered a differentiated picture, where deportations were conducted in the protectorates of Hong Kong and Zanzibar, as well as in the West African colonies. In the older, more established colonies, he opined, British citizens were not expelled.[137]

Hatzfeldt's answer, however, only offered part of the picture, with Max Fleischmann commenting in 1909 that to preserve the reputation of the state, numerous countries such as Britain, France, the Netherlands, and the United States had not only expelled their citizens from their colonies but had also actively repatriated their troublesome citizens from sensitive regions via their consulates:

> Above all the French, for the past two hundred years (1681) have given their consuls the right to expel their citizens, who through their conduct could damage the good

[133] 'Gesetz, betreffend die Verfassung des Deutschen Reichs vom 16 April 1871', *Bundes-Gesetzblatt des Deutschen Bundes*, No 16, 1871, p. 65.

[134] 'Gesetz über die Freizügigkeit', *Bundesgesetzblatt des Norddeutschen Bundes*, 1867. §1. Jeder Bundesangehörige hat das Recht, innerhalb des Bundesgebietes: 1) an jedem Orte sich aufzuhalten oder niederzulassen, wo er eine eigene Wohnung oder ein Unterkommen sich zu verschaffen im Stande ist; 2) an jedem Orte Grundeigenthum aller Art zu erwerben; 3) umherziehend oder an dem Orte des Aufenthalts, beziehungsweise der Niederlassung, Gewerbe aller Art zu betreiben, unter den für Einheimische geltenden gesetzlichen Bestimmungen. In der Ausübung dieser Befugnisse darf der Bundesangehörige, soweit nicht das gegenwärtige Gesetz Ausnahmen zuläßt, weder durch die Obrigkeit seiner Heimath, noch durch die Obrigkeit des Ortes, in welchem er sich aufhalten oder niederlassen will, gehindert oder durch lästige Bedingungen beschränkt werden…§12. Die polizeiliche Ausweisung Bundesangehöriger aus dem Orte ihres dauernden oder vorübergehenden Aufenthalts in anderen, als in den durch dieses Gesetz vorgesehenen Fällen, ist unzulässig.'

[135] See for example the entry under 'Ausweisung' in J. Conrad, L. Elster, W. Lexis, and E. Loening, *Handwörterbuch der Staatswissenschaften*, Gustav Fischer, Jena, 1909, p. 315. On the Netherlands, see Stengel, 'Die Zulässigkeit der Ausweisung', p. 872. The exception to this consensus was V. Fuch's brief contribution to the debate 'Zur Frage der Ausweisung aus den Schutzgebieten', *Koloniale Rundschau*, 1910, pp. 50–2, which Max Fleischmann comprehensively responded to in 'Nochmals die Ausweisung aus den Schutzgebieten', pp. 238–45.

[136] Telegramme, 6 November 1889 in BA Berlin R100/7547 Ausweisungen aus den deutschen Schutzgebieten. Allgemeines, pp. 4–5.

[137] Hatzfeldt, BA Berlin R100/7547 Ausweisungen aus den deutschen Schutzgebieten. Allgemeines, pp. 6–7.

> name of France (contre tout Français qui par sa mauvaise conduit et ses intrigues pourrait être nuisible au bien general), while the same standpoint is shared by, for example, England and Italy, Russia and Austria-Hungary.[138]

The legality of removing citizens from the colonies was confirmed by the Imperial Justice Office in November of 1891, when it reported to Chancellor Leo von Caprivi that colonial authorities were perfectly within their rights to expel German citizens. Citing the 1888 position of legal expert Georg Meyer that colonial authorities enjoyed a 'completely unrestricted right of expulsion', and the corroborating verdict of Karl von Stengel in 1889 that 'authorities in the protectorates can expel not only foreigners but also citizens, given that the protectorates are not internal to the empire', the Justice Office advised the chancellor:

> The administration of the protectorate…is not limited by legal restrictions in the area of internal government, in particular the security forces. Namely, the *Freizügigkeitsgesetz* from November 1867 is not valid in the protectorates. It therefore follows that, on the grounds of public security and welfare, the residency of not merely foreigners but also imperial citizens can be withdrawn at any time.[139]

Although the right to expel German nationals from Southwest Africa without reference to the *Freizügigkeitsgesetz* may have been widely accepted in legal circles, it remained controversial, with the Colonial Office directing that these powers should be used only sparingly against those who were either a real threat to public order or alternatively were clearly undermining Germany's colonizing efforts.[140]

Overlooking the very different constitutional position of domestic and colonial expulsions, Max Fleischmann surmised in 1909 that, although for many Germans colonial expulsions would appear to be unprecedented in the history of the German *Rechtsstaat*, the examples of the *Jesuitengesetz* and the *Sozialistengesetz* had shown the legality of expelling German citizens from sensitive parts of the empire more than thirty years earlier. 'Times of crisis enabled further exceptions' to the principle of freedom of movement, he argued; particularly given that the process of expulsion was a mere repatriation back to Germany rather than a complete removal from the German nation.[141] In this context other jurists such as Egon Kruckow argued that the colonial situation periodically necessitated 'the iron fist' in the form of expulsions, even mass expulsions, in a juridical space external to the provisions of the constitution.[142]

Public and political debate on the legality of expelling German citizens from the colonies was heightened after the *Deutsche Kolonialzeitung* published a position piece on the expulsions in December 1910, which followed the principles

[138] Fleischmann, 'Die Ausweisung von Reichsangehörigen', pp. 650, 654–5.

[139] Reichs-Justizamt 9 November 1891 to Caprivi, in R100/7547 Ausweisungen aus den deutschen Schutzgebieten. Allgemeines, p. 13. See further Stengel 'Die Zulässigkeit der Ausweisung', pp. 869–70.

[140] 16 September 1901, in BA Berlin, R1001/7547 'Ausweisungen aus den deutschen Schutzgebieten. Allgemeines', p. 18.

[141] Fleischmann, 'Die Ausweisung von Reichsangehörigen', pp. 647–52.

[142] Kruckow, *Ausweisungen aus den deutschen Schutzgebieten*, p. 74.

outlined in a lecture held by Max Fleischmann at the 1910 congress of the *Deutsche Kolonialgesellschaft*. The lecture was followed by a discussion that led to the adoption of a resolution aimed at the German government to the effect that, while the need for the capacity to expel German citizens from the colonies was recognized, the conditions under which these expulsions could take place should be codified, to ensure that the discretionary power of the governor did not lead to unexpected consequences. Rather, the conditions under which an expulsion order might be issued should be made predictable through the adoption of clear guidelines.[143]

An official submission was made to Chancellor Bethmann-Hollwegg by the *Deutsche Kolonialgesellschaft* on 25 January 1911. Before tendering his response, Colonial State Secretary Lindequist consulted with the governors of the various colonies, to see how they felt about codifying their expulsion powers and what regulations should be adopted.[144] Without exception, the governors of Germany's colonies argued against codifying their expulsion powers, citing the variety of unforseen offences that might arise and require a case-by-case assessment, with the governor of German East Africa citing the difficulties that the English had made for themselves in the region by such regulation.[145] On 28 December 1911, the *Kolonialgesellschaft* was informed of the governors' reaction and the government's decision not to seek to intervene to constrain the prerogative power of the governors. Thereafter it was left to the discretionary power of the governors, who would assess the probable threat to colonial order and security posed by German citizens in their colony on a case-by-case basis.[146]

The intervention of the *Kolonialgesellschaft* was noted by scholars,[147] yet the legal parameters within which expulsions were enacted remained unchanged. In

[143] *Deutsche Kolonialzeitung* (50), 1910. See too the *Kolonialgesellschaft* minutes from 1910, pp. 41–56 in BA Berlin, R1001/7547 'Ausweisungen aus den deutschen Schutzgebieten. Allgemeines', p. 89. The statement read 'Zu den wichtigen Frage der Ausweisung Deutscher aus den deutschen Schutzgebieten hat die Abteilung Berlin die folgenden Leitsätze eingebracht: A. Es ist anzuerkennen, daß in den Schutzgebieten eine Ausweisung auch von Reichsangehörigen zulässig sein muß. B. Die bisherige unbeschränkte Befugnis der Verwaltungsbehörden erscheint wegen der schwerwiegenden Folgen einer Ausweisung mit der Notwendigkeit ausreichenden Rechtsschutzes unvereinbar. C. Es empfiehlt sich, die bisherige Ausweisungsbefugnis in folgenden Richtungen zu beschränken: a) die Ausweisung darf nur in folgenden Fällen erfolgen: 1. Bei Verurteilung zu Zuchthaus- oder zu Gefängnisstrafe mit Verlust der bürgeerlichen Ehrenrechte oder Stellung unter Polizeiaufsicht; 2. Bei solchen Sittlichkeitsvergehen gegen Eingeborene, die geeignet sind, das Ansehen der Weißen erheblich zu gefährden und bei geschlechtlichem Verkehr einer Weißen mit Eingeboren; b) die Ausweisung darf in den unter a)2 bezeichnteen Fällen nur verfügt werden, nachdem ein vom Gouvernementsrat zu ernennender Ausschuß, dem mindestens zur Hälfte nichtbeamtete Mitglieder anzugehören haben, gehört worden ist. Dieser Ausschuß muß das Recht eigener Beweiserhebung haben; c) die Ausweisung kann erfolgen für das gesamte Schutzgebiet oder einzelne Teile. Sie soll zeitlich beschränkt werden… Die Deutsche Kolonialgesellschaft bittet die Reichsregierung, auf gesetzlichem Wege festzustellen, auf Grund welcher Vorraussetzungen die Ausweisung zulässig ist und welches Rechtsmittel dagegen ergriffen werden kann.'

[144] Lindequist, 15 March 1911 in BA Berlin, R1001/7547 'Ausweisungen aus den deutschen Schutzgebieten. Allgemeines', p. 94.

[145] BA Berlin, R1001/7547 'Ausweisungen aus den deutschen Schutzgebieten. Allgemeines', pp. 100–11.

[146] Lindequist to DKG, 28 December 1911 in BA Berlin, R1001/7547 'Ausweisungen aus den deutschen Schutzgebieten. Allgemeines', p. 122. See too *Frankfurther Zeitung*, 31 January 1912.

[147] See for example Sassen, 'Das Recht der Freizügigkeit', pp. 392–3.

1913, Egon Kruckow was still able to explain that the governor of Southwest Africa was perfectly within his legal rights to expel as many German citizens from the colony as he wished, for as long as he wished, on any grounds he cared to nominate.[148] Until World War One, the governors of Southwest Africa were able to use the power to expel German citizens not as a sentence but as an administrative means of preserving the colonial order against any perceived threat to the colonizing endeavour, including delinquency, interracial homosexuality, sexual violence, and violence against indigenous people carried out without the imprimatur of the state.

Without question, powers of the governor and of military commanders such as Lothar von Trotha in the colonies were not the same as provincial governors, state authorities, or military figures in Germany itself. Freed from many of the constitutional and legal constraints that hampered centralized rule in the colonial metropole, the Kaiser's vice-regal delegates were able to vigorously intervene to shape the demographic complexion of the colony in order to secure it against perceived military threats such as the Herero and Witbooi, or biopolitical threats such as citizen *Mischlinge* and homosexual German men. Yet the German *Rechtsstaat* did not abandon its control over the colony entirely. German civil society, and in particular the missions, could provoke national debate aimed at redressing abuses, as was the case with the scandal surrounding the expulsion of the Witbooi to other African colonies. In this they could be both helped and hindered by the press. The *Reichstag* was able to exert pressure on the management of the colony through its budgetary power of review, to the extent of forcing an election that in some respects resembled a plebiscite on colonial management as it did in 1907. Furthermore, the *Reichstag* and the chancellor could act as a conduit to express civic, bureaucratic, and parliamentary consternation to the Kaiser, as in the case of Trotha's October 1904 expulsion order. For his part, as the embodiment of the disparate arms of the German *Rechtsstaat*, the Kaiser was able to chastise or recall any official serving in the colony in his stead who had lost his confidence.

The enhanced jurisdiction of the Kaiser and his governor, as well as the unique civic and political avenues that sprang up to mitigate it were symptomatic of the anomalous forms that sovereign power took in German Southwest Africa. The history of the various expulsions enacted in German Southwest Africa shows that, as an assemblage of competencies, jurisdictions, and interests, the colony moved in a slightly different legal orbit to the German metropole. Yet the ties between the two were sufficiently strong that the latter still had the capacity to regulate its satellite via a network of bespoke (but not 'exceptional') laws, such as the 1886 Protectorate Act and the 1879 Consular Jurisdiction Act.

[148] Kruckow, *Ausweisungen aus den deutschen Schutzgebieten*, pp. 69–80.

Conclusion

In 1886, the Centre Party deputy Schorlemer-Alst expressed his doubts that expulsions, and the exceptional laws enabling them, had exercised a stabilizing effect on German politics, declaring:

> The impression that these laws make domestically is not a good one. They lead to an uncomfortable mood and to a disturbance of the domestic peace, to the separation of natural allies and to the creation of unnatural alliances if not unions.[1]

Schorlemer-Alst's assessment of the political effects of the exceptional measures that had enabled mass expulsions was correct. Domestically, the *Reichstag*'s passing of both the Jesuit Law and the Socialist Law had proved to be electorally counterproductive, galvanizing the Catholic and the working class vote behind the Centre and Social Democratic parties. Similarly, the perceived problems represented by the presence of non-citizen Poles, Danes, and 'Gypsies' were not solved by the German states' expulsions of these groups. Not only did these mass expulsions provoke protests and resistance from those directly affected, they also made for some complex and at times counterintuitive political alliances. This was most evident in the evolving strategic cooperation between the Catholic Centre Party and the Social Democrats, who together played a role in combatting almost all of the expulsions in the *Reichstag*. Just as August Bebel had attacked the Jesuit Law as a vicious and unnecessary measure, so too Ludwig Windthorst had hastened to defend the socialists against the expulsion measures housed by the Socialist Law. Both the Catholics and the socialists joined to denounce the expulsion of Danes and Poles, as well as to decry the treatment of Africans and Germans in Southwest Africa. Beyond this, Polish deputies remonstrated against the expulsion of Danes from Schleswig, while Hanoverians and Alsatians protested against the measures meted out to the Poles in 1885/86.

This tactical cooperation between otherwise unrelated, often politically opposed parties resulted in some very public condemnations of the actions of other arms of the state by the *Reichstag*, as well as constant anxiety for chancellors, particularly Bismarck, about the 'loyalty' or pliability of the *Reichstag*. The foremost example of this was when the *Reichstag* censured Prussia's expulsion of the Poles in January 1886, thereby making clear that the empire as a whole would not be held responsible for the independent actions of Prussia. As Schorlemer-Alst argued, instead of returning the German Empire to the stability of a chimeric pre-crisis status quo, the sporadic and politically intemperate practice of purging the empire further

[1] Burghard von Schorlemer-Alst, *Verhandlungen des Hauses der Abgeordneten*, 22 February 1886, p. 705.

destabilized the German state, reinforcing existing divisions along confessional, ideological, and nationalist lines.

While seen as an expression of the strength of the German state, and indeed experienced as this by those affected, when viewed together, Imperial Germany's various mass expulsions and the apparent readiness to use bespoke legislation and regulatory measures to address the tectonic shifts in Germany's demography and politics were more an expression of the difficulties and frustration experienced by the empire and its constituent states in confronting the underlying processes of structural change that had begotten new forms of political divergence in the first place. Unsurprisingly, these expulsion measures failed spectacularly in their professed aims of settling the empire's various 'national' questions, consolidating power in contested borderlands, making nomadic 'Gypsies' live sedentary lifestyles, securing the colonial periphery of the empire, and politically nobbling Catholicism and socialism. More broadly, however, expulsions and related *Ausnahmemaßnahmen* were also utterly ineffective in reversing the deeper social, demographic and economic changes that were revolutionizing the empire and throwing up such questions in the first place. These underlying changes had reconstituted the structural context within which the various decisions to expel certain groups *en masse* were made. The geopolitical and demographic realities engendered by the transition to an industrial, global trade oriented economic base and the construction of an enlarged nation-state that would also become a global empire had introduced a new set of power relationships between anxious victors and embittered rivals. It had also called into life new approaches to population management that sought to regulate the flow of power between the imperial core and its peripheries. So too, the concomitant consolidation and spread of new forms of bourgeois and proletarian political expression, partially channelled into a struggle for hegemony over the emerging institutional framework of a constitutional *Rechtsstaat*, led to a discursive and legal reframing of the power of the institutions of the state to decide who would be tolerated and who would be expelled. Crucial here was the shift to the discourse of the rights of the citizen. Finally, the disruption of pre-industrial modes of living, working, and belonging in Central and Eastern Europe and the acceleration of population movements to regions offering enhanced opportunities challenged one of the central claims of the sovereign state; that it was in control of its borders and the movements of those crossing them. Expulsions could at best target the symptoms of such structural changes. As piecemeal, largely reactive measures, however, they could not reverse them.

Domestically, resorting to mass expulsions also deeply complicated the working relationship between Berlin, the states, and their provinces, or (as most pronounced in the cases of Alsace-Lorraine and German Southwest Africa) between the imperial centre and the imperial periphery, with each contesting the legal limits of the sovereign power claimed by the other to implement expulsion measures. Invariably, when not exercising the type of direct legislative control over the expulsion process that they had in the cases of the Jesuit and Socialist laws, many parties within the *Reichstag* sought to claim for the assembly the right to adjudicate

on the question of state-based mass expulsions as well, on the grounds that they were necessarily questions of foreign policy. They did so, however, fully cognizant of the fact that the *Reichstag* lacked the constitutional capacity to enforce central control over expulsions initiated at the local level by state or provincial authorities. The elected representatives of the *Reichstag* could in these instances only express their desire to distance themselves from the trajectory of state policy by forthrightly expressing their indignation at the state's actions, while reluctantly conceding the primacy of the states' rights under the federal system. Yet in many cases, the *Reichstag* played a fundamental but not unilateral role in either initiating mass expulsions, such as with the Socialist and Jesuit laws, or stymying them, as was the case with attempts to legislate for penal colonies as a destination for undesirable citizens. Yet, like all of the state bodies comprising the German *Rechtsstaat*, the *Reichstag* never fully wrested to itself the prerogatives or sovereign powers vested in another of the institutions comprising the diffuse assemblage of imperial sovereignty. This constitutional restraint was shared by the other arms of the state. In all of the cases studied here, the *Reichstag*, the chancellor, the Kaiser, the *Bundesrat*, the *Landtage*, police authorities, and the bureaucracy never illegally overreached their constitutionally mandated powers to either enforce or halt mass expulsions, irrespective of the frequently apparent temptation to do so. Even Lothar von Trotha, upon having his genocidal *Ausweisungsbefehl* countermanded by the Kaiser at the request of the chancellor, conceded his right to do so. Indeed, as Margaret Anderson has pointed out, despite rumblings and threats from the Right, a *Staatsstreich* of the type that might have perhaps unveiled a lurking Schmittian sovereign never occurred.[2] The observance of the forms of law were, on the one hand, simply too ingrained and, on the other, suitably flexible enough to allow the desired exclusionary measures to be enacted without resorting to such a legal rupture.

With regard to the question of the level of political power concentrated in the hands of an oligarchic few in Imperial Germany, the picture that emerges from the history of these mass expulsions is unequivocal. On the one hand, the significant role played by civic actors in initiating, amplifying, or mitigating the effects of mass expulsions must be acknowledged as of fundamental importance in many of the cases studied here. The political and social power expressed in the agitation of Germany's associations and political pressure groups illustrates the permeability of the civic–state frontier in Imperial Germany and the multidirectional nature of imperial power flows prior to 1914. Whether German nationalists demanding state action against rival Danish or French nationalists in North Schleswig and Alsace, grassroots party members of the Social Democratic Party rallying to support the families of the expelled and assisting the party in sustaining itself underground, missionaries in Africa lobbying for the repatriation of indigenous people to their country of origin, or anti-Jesuit liberal associations petitioning the

[2] Margaret Lavinia Anderson, *Practicing Democracy: Elections and Political Culture in Germany*, Princeton University Press, Princeton, 2000, pp. 422–4.

Reichstag for legislation to expel those they saw as the foreign agents of the Vatican in Germany, civic associations and their press organs were clearly able to exercise significant pressure and influence on those within state institutions who were in a position to decide on the applicability and nature of expulsion measures.

On the other hand, in terms of the formal apparatus of the state, and the translation of these broader socio-civic processes of governmentality into sovereign power effects, it is hard to maintain the picture of the German Empire as dominated by an unresponsive political elite. Notwithstanding the important role outlined for the Kaiser, the *Bundesrat*, and the chancellor in the constitution, particularly the power vested in the Kaiser by Article 68, this power was never incontestable, nor was it in any way absolute in either theory or practice. To be sure, the chancellor and the State Secretaries at both the federal and state level played an important role, but so too did local police authorities, provincial *Landräte*, and state deliberative assemblies. Unlike Schmitt's hidden Hobbesian Leviathan, there simply was no overridingly sovereign organ of state which consistently or even sporadically exercised a form of metajuridical authority to the exclusion of all others in times of perceived crisis. Instead, to paraphrase James Sheehan, sovereign power in Imperial Germany consistently manifested itself as 'a collection of different rights, powers and aspirations'.[3]

Mass expulsions, as seemingly self-evident expressions of autocratic and centralized state power, in fact demonstrated the multiple loci of sovereign power at a number of clearly demarcated levels of government and bureaucracy. The range of constitutionally empowered political institutions at the state and provincial level and the power of local authorities to act more or less independently unless they specifically requested help from a superordinate tier of government counteracted any tendency towards centralizing or personalizing coercive state power. Together with the vocal and effective forms of agitation conducted by grassroots civic associations, the rank and file membership of political parties, prominent public intellectuals and the heterogeneous and often vociferous media, the proliferation of sites of state agency problematized any efforts to regulate and constrain power in such a way as to consistently favour the interests of an ostensibly slender ruling clique. Often, expulsions exacerbated the already evident impossibility of stabilizing the hegemony of a pre-existing political elite, with the anti-Catholic *Kulturkampf*, of which the Jesuit Law was a part, for example, splitting Germany's conservatives along confessional lines in the empire's assemblies, complicating the capacity for elite group solidarity, particularly in the Prussian *Herrenhaus*.[4] So too, the expulsion of Poles from Prussia in 1885/86 provoked protests from agribusiness concerns east of the Elbe, running entirely contrary as it did to the material interests of the conservative owners of manorial estates in the east that relied heavily on seasonal Polish labour from Russia and the Habsburg

[3] James Sheehan, 'The Problem of Sovereignty in European History', *American Historical Review* 111(1), 2006, pp. 2–3.

[4] Hartwin Spenkuch, *Das Preußische Herrenhaus. Adel und Bürgertum in der Ersten Kammer des Landtages, 1854–1918*, Droste Verlag, Düsseldorf, 1998, pp. 93–104.

Empire for their prosperity.[5] Rather than an indispensable tool of the conservative *Obrigkeitsstaat* and of centralized political power, the mass expulsions that took place in the German Empire demonstrate the extent to which it was a *Rechtsstaat* characterized by multiple, constitutionally delineated sites of sovereign power which were subject to intense and often effective forms of political scrutiny and civic pressure that were by no means politically monodirectional.

Returning to the language of Carl Schmitt, with power exercised at multiple and in some cases overlapping levels during these pre-1914 periods of exception, it was not the case that there were insufficient constitutional means to halt mass population expulsions which were being enacted courtesy of the metajuridical *auctoritas* of the sovereign. Rather, there existed an abundance of legal possibilities available at numerous administrative levels that enabled these expulsions to be enacted through normative, constitutionally sanctioned law, as an expression of the institutional *potestas* or sovereign will of social segments beyond (but also of course including) the *Reichstag*, the chancellor, or the Kaiser. The capacity of the Kaiser or chancellor to expel citizens or non-citizens was heavily circumscribed by clear, constitutionally imposed limitations. It no way was it metajuridical in the strong Schmittian sense. The power of a range of other German authorities and indeed that of civil society always remained critical to the processes of expelling undesirable elements within German society. To the extent that the terms *Obrigkeitsstaat* and *Rechtsstaat* function as alternative extremities along a politico-constitutional continuum,[6] the mass expulsions that occurred in Imperial Germany display the hallmarks of political actions carried out by the latter rather than the former, notwithstanding the intrinsically 'authoritarian' nature of the measures themselves. Given the strict adherence to constitutional norms that respected the federated nature of the empire, the extensive role of civic associations in advocating or condemning expulsion measures, and the importance of elected deputies in the state and federal assemblies in initiating or debating the mass expulsions, the most apt description for the socio-political context of *Kaiserreich* expulsions is that they occurred within a polity that emphasized a blend of civic participation, public debate, grassroots agency, representative government, bureaucratic process, and the legally sanctioned use of the state's coercive apparatus.

This picture of a productive tension between variously empowered political agents offered by the mass expulsions of the *Kaiserreich* suggests a number of things. Primarily, it illustrates the existence of functioning constitutional limits on the power of the chancellors, the assemblies, and the emperors of Germany, and stresses the federal and participatory nature of the empire, even during periods of crisis. Secondly, the debates surrounding these expulsions, and in particular the way in which the term 'exceptional law' was regularly deployed during

[5] Piotyr S. Wandycz, *The Lands of Partitioned Poland, 1795–1918*, University of Washington Press, Seattle, 1974, p. 236.

[6] James Retallack, 'The Authoritarian State and the Political Mass Market', in S. O. Müller and C. Torp, *Imperial Germany Revisited: Continuing Debates and Perspectives,* Berghahn, New York, 2011, p. 85.

the *Kaiserreich* expulsions, contradict the view that such *Ausnahmegesetze* were indicative of a reversion to extra-constitutional authority prior to 1914. Instead, it suggests that the variety of sites of power that gave rise to the expulsion measures reveal the diffuse possibilities for exercising oppressive sovereign power within a functioning constitutional *Rechtsstaat*. All of the expulsions studied here were legally sanctioned actions that complied with the delineation of powers within the German constitution. Even in legal sites external to the constitution, new laws carefully crafted new parameters for extra-territorial sovereign action. Without exception, it was the normative processes of law, not the reversion to metajuridical *auctoritas* that enabled a series of radically exclusionary measures to be taken against those deemed a threat to the body politic.

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